TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. 51.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CENTRAL STOCK YARDS COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED MARCH 30, 1908.

(20,646.)

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SUPREME COURT OF THE UNITED STATES.

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No. 268.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CENTRAL STOCK YARDS COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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1 Pleas before the Honorable The Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 15th day of November, A. D. 1906.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCKYARDS COMPANY, Appellee.

Appeal from the Jefferson Circuit Court (Chy. B. 1st. Div.).

Be it remembered that the appellant by its attorney, on the 30th day of May, A. D. 1904, filed in the office of the Clerk of the Court of Appeals, a transcript of the record herein, including two volumns of depositions, and two volumns of exhibits, and which are as follows:

2 STATE OF KENTUCKY, *County of Jefferson:*

30269.

Pleas before the Honorable Shackelford Miller, Judge of the Jefferson Circuit Court, Common Pleas Division, at the Court House, in the City of Louisville, County and State aforenamed, and on dates hereinafter mentioned.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD CO., Defendant.

Transcript of Record.

3 Be it remembered, that, heretofore, to-wit, on the 4th day of November, 1898, came plaintiff, by counsel, and filed its petition herein.

Said petition is in words and figures as follows, to-wit:

Jefferson Circuit Court.

THE CENTRAL STOCK YARDS CO., Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD CO., Defendant.

Petition in Equity and Affidavit.

The plaintiff, the Central Stock Yards Company, says that it is a duly and legally authorized corporation under the laws of the State of Delaware; that it has in every and all respects complied with the requirements of the constitution and laws of the State of Kentucky necessary for it to conduct its business in said State; that it is con-

structed and fully equipped with the latest improved and
4 best facilities for, and is now engaged in receiving, unloading, feeding, watering, caring for, weighing, having sales made of and reloading livestock that may be consigned to it for care, attention and sale; that its stock yards are on the line of the Southern Railway Company in Kentucky in Jefferson County, Kentucky, about nine miles from the terminus of said railway in the City of Louisville; that the said Southern Railway Company in Kentucky is a duly created, organized and operating railway system in Kentucky under the laws thereof and that plaintiff's said stock yards has by the said Southern Railway Company been duly and regularly established and now is a station on the line of the said Southern Railway Company in Kentucky known as Central Stock Yards, Kentucky; that said Southern Railway Company has heretofore duly and regularly given notice of the establishment of said Station to its agents and all connecting railways and common carriers in Kentucky.

Plaintiff says that it is engaged in the stockyard business
5 and has ample capital, premises and facilities in every way to carry on properly and economically a stock yard for the reception of shipments of stock and for the sale of the same, and for feeding, watering, caring for and giving all proper attention thereto while in its custody.

Plaintiff further says that it, with the Southern Railway Company in Kentucky has constructed and has in operation all necessary switches, tracks, platforms and chutes connecting its said yards with said railway system and has modern and of the best facilities for receiving and unloading livestocks of every description and in any quantity that may be consigned to it; that said Southern Railway Company has heretofore notified all railways and common carriers, including the defendant, the Louisville and Nashville Railroad Company, entering the said City of Louisville that it, the Southern Railway Company, would be after November 1st, 1901, and that it is now ready, willing and able to accept at points of physical connection with said Louisville and Nashville Railroad Com-
6 pany, and all other railway companies and common carriers, livestock entering the City of Louisville consigned to any and all persons at its station Central Stockyards, Kentucky on its line aforesaid in Jefferson County, Kentucky, and that it would be and is now willing to be responsible from such point of connection for the delivery of such livestock and the connection of all charges on same and would promptly return to such point of connection all empty cars and account for all freight charges collected in the usual way.

Plaintiff says that the defendant, the Louisville and Nashville Railroad Company, is, was at the times hereinafter mentioned, and has been for many years a railroad corporation created, organized and existing under and by virtue of the laws of the State of Kentucky, with power in its corporate name to contract and be contracted with, sue and be sued, and to conduct and operate a steam

railroad in and through Kentucky and elsewhere with its
7 chief office and terminus in Louisville, Kentucky; that it is so operating and maintaining such road in Kentucky and, as such, is a common carrier of passengers and freight.

Plaintiff further says that the aforesaid Southern Railway has in Louisville, Kentucky two points of physical connection between its tracks and the tracks of the said Louisville and Nashville Railroad Company, which are known respectively as the fourth avenue connection and the 7th and Magnolia Streets connection, and that the said connection known as Fourth Avenue connection between the tracks of the Louisville and Nashville Railroad Company and the said Southern Railway is within a few hundred yards of the stock yards of the plaintiff, and that the aforesaid connection known as the 7th and Magnolia Streets connection is a mile or more distant from the stockyards of plaintiff, and that at said two points of physical connection between the tracks of the said Southern Railway
8 and the tracks of the Louisville and Nashville Railroad Company, the said two Railway systems have heretofore received and delivered and are now receiving and delivering, each one to the other and from the other, freight in car load lots or less for delivery to consignees on the track or tracks of the one or the other.

Plaintiff says that the defendant, the Louisville and Nashville Railroad Company, is a common carrier, as aforesaid, in the State of Kentucky of passengers and freight of all kinds and descriptions, and is in law and equity, as well as under its charter and the laws of Kentucky, required and compelled to receive from all persons alike, without discrimination, freight of every character in carload lots or less quantities and to transport, switch and deliver same to connecting carrier where the place of delivery is on the line of such connecting carrier and where there is a physical connection between its tracks and the tracks of such connecting carrier or carriers.

Plaintiff further says that the defendant, the Louisville
9 and Nashville Railroad Company, has announced its intention and purpose to refuse to receive, bill or deliver any livestock at any station on its line consigned to any point of physical connection between its said line and the line of the Southern Railway Company in Kentucky to any one at Central Stockyards Kentucky or to said Central Stock Yards Company, and that the defendant has instructed all of its Station Agents and employés along its lines of railway not to receive, bill or deliver any livestock at any station on its line consigned to any point of physical connection in Louisville, Kentucky, between the tracks of the said defendant and those of the said Southern Railway Company destined to any one at the Central Stockyards Kentucky or to the plaintiff, The Central Stock Yards Company.

That on November 2nd, 1901, at Lorette, Kentucky, a duly and regularly established station on the railway line of the defendant in Kentucky, Mattingly and Beaven tendered and offered to ship over the line of the defendant railroad Company from said Sta-
10 tion a carload of livestock of the value of about $900, and ordered and directed that the said carload of livestock which

was loaded in Louisville and Nashville Railroad Company's car No. 19,583, should be billed and shipped over defendant's line to the point of physical connection in Louisville, Kentucky, between the tracks of said defendant railroad Company and those of the Southern Railway Company to Central Stockyards, Kentucky, a station on the line of and in care of the said Southern Railway Company, but that the defendant, neglected, failed and refused, in violation of the said instructions, to so bill, transport, consign or deliver said livestock but did bill the said livestock to the order of said consignors as directed at Louisville, Kentucky, and in care of the Central Stock Yards, Louisville, Kentucky, but neglected, failed and refused, as instructed, to deliver said car of livestock to the Southern Railway Company in Kentucky in Louisville, Kentucky, for delivery to the Central Stock Yards Company, at Central Stockyards, Kentucky, as directed, and unlawfully and without authority or instruc-
11 tions so to do, delivered the said livestock to the Bourbon Stockyards Company in Louisville, Kentucky, where it still remains.

That on November 2nd, 1901, at Adairville, Kentucky, a duly and regularly established station on the railway line of the defendant in Kentucky, W. S. Gambill tendered and offered to ship over the line of the defendant railroad company from said station two carloads of livestock of the value of about $1,600. and ordered and directed that the said carloads of livestock, which was loaded in Louisville and Nashville Railroad Company's cars Nos. 61031 and 61,032 should be billed and shipped over defendant's line to the point of physical connection in Louisville, Kentucky between the tracks of the said defendant railroad company and those of the said Southern Railway Company in Kentucky to Central Stockyards, Kentucky a station on the line of, and in the care of the said Southern Railway Company, but that the defendant neglected, failed and refused, in violation of the said instructions, to so bill, transport, consign or deliver said livestock, but did bill the said livestock to the order of
12 said consignors as directed at Louisville, Kentucky, and in care of the Central Stock Yards Louisville Kentucky, but neglected, failed and refused, as instructed, to deliver said car of livestock to the Southern Railway Company in Kentucky in Louisville, Kentucky for delivery to the Central Stock Yards Company, at Central Stock Yards, Kentucky, as directed, and unlawfully and without authority or instructions so to do, delivered the said livestock to the Bourbon Stock Yards Company in Louisville, Kentucky where it still remains.

That on November 2nd, 1901, at Adairville, Kentucky, a duly and regularly established station on the railway line of the defendant in Kentucky, D. E. Garrett tendered and offered to ship over the line of the defendant railroad company from said station a carload of livestock of the value of about $650, and ordered and directed that the said carload of livestock, which was loaded in Louis-
13 ville and Nashville Railroad Company's car No. 18,980, should be billed and shipped over defendant's line to the point

of physical connection in Louisville, Kentucky between the tracks of the said defendant railroad company and those of the said Southern Railway Company in Kentucky to Central Stockyards, Kentucky, a station on the line of and in care of the said Southern Railway Company, but that the defendant neglected, failed and refused, in violation of the said instructions to so bill, transport, consign or deliver said livestock, but did bill the said livestock to the order of said consignor as directed at Louisville, Kentucky, and in care of the Central Stockyards, Louisville, Kentucky, but neglected, failed and refused, as instructed, to deliver said car of livestock to the Southern Railway Company in Kentucky in Louisville, Kentucky for delivery to the Central Stock Yard Company, at Central Stock Yards Kentucky, as directed, and unlawfully and without authority so to do, delivered the said livestock to the Bourbon Stock Yards Com-
14 pany in Louisville, Kentucky, where it still remains.

That on November 2nd, 1901, at Cumberland Furnace, Tennessee, a duly and regularly established station on the railway line of the defendant in Tennessee, W. A. Bell tendered and offered to ship over the line of the defendant railway company from said station a carload of livestock of the value of $— and offered and directed that the said carload of livestock, which was loaded in Louisville and Nashville Railroad Company's car No. 18,727, should be billed and shipped over defendant's line to the point of physical connection in Louisville, Kentucky between the tracks of the said defendant railroad company and those of the said Southern Railway Company in Kentucky, to the Central Stockyards Kentucky, a station on the line of and in care of the said Southern Railway Company, but that the defendant neglected, failed and refused, in violation of the said instructions to so bill, transport, consign or deliver said livestock, but did bill the said livestock to the order of said consignor as directed at Louisville, Kentucky, but neglected,
15 failed and refused, as instructed to deliver said car of live stock to the Central Stock Yards Company at Central Stockyards, Kentucky, as directed, and unlawfully and without authority or instructions so to do, delivered the said livestock to the Bourbon Stock Yards Company in Louisville Kentucky where it still remains.

That on the 2nd day of November 1901, at Woodlawn, Kentucky, a duly and regularly established station on the line of the defendant, the Louisville and Nashville Railroad Company, J. J. Brown tendered to said railroad company, its agents and employés, a carload of livestock, of the value of about $1,100, which was loaded in Louisville and Nashville Railroad Company's car No. 19,570 and that said J. J. Brown ordered and directed the regular agent of the defendant the Louisville and Nashville Railroad Company at said Station to bill, transport and deliver the said livestock to the Central Stack Yards Company, Central Stockyards, Kentucky, in care of
16 the Southern Railway Company in Kentucky, and that the said agent of the said defendant did so bill said car of live stock and the defendant transported same to Louisville, Kentucky; but notwithstanding the instructions so received by it and notwith-

standing its contract to consign and deliver the said car of live stock, the defendant neglected, failed and refused to deliver said carload of livestock to the Southern Railway Company in Kentucky in Louisville for delivery to the said Central Stock Yards Company as directed but unlawfully and wrongfully and without instructions and against the positive instructions of the said J. J. Brown, delivered the said carload of live stock to the Bourbon Stock Yards Company in Louisville, Kentucky where it now is.

Plaintiff further says that the refusals of the Louisville and Nashville Railroad Company as aforesaid to bill, transport or deliver the livestock as ordered, was and is arbitrary, unlawful and oppressive as all of the said livestock was ordered and directed to be
17 shipped in care of plaintiff by way of the Southern Railway Company at the point of physical connection in Louisville, Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Railway Company and that the shippers of the said livestock are looking to and holding the plaintiff responsible for the care, attention and feeding of the said livestock so shipped and wrongfully delivered by the said defendant to the Bourbon Stock Yards Company.

Plaintiff further says that the unlawful and unauthorized delivery of said livestock has greatly damaged the plaintiff and is an unjust, unauthorized and illegal discrimination against this plaintiff, and unless restrained and prevented and unless the said Louisville and Nashville Railroad Company is required to make delivery of the said livestock as ordered great and irreparable injury and
18 damage will result to plaintiff and its stockyard business.

Plaintiff further says that it has invested in its plant several hundred thousand dollars and has connected therewith a large number of the leading Commission Houses engaged in the purchase and sale of livestock from day to day, and that a large number of the customers of the said Commission Merchants engaged in business at its stockyards and livestock dealers throughout the State of Kentucky and elsewhere have expressed the purpose of doing business at the yards of the plaintiff and have endeavored to have stock consigned to the plaintiff for sale through the said Commission Houses and for care and attention thereto by plaintiff, but that the defendant has unlawfully and without authority of law refused and failed to bill the livestock or to transport the same to the stockyards of the plaintiff or to bill the said livestock *or to bill the said livestock* to any point of physical connection in Louisville Kentucky between the tracks of said Louisville and Nashville Railroad Company and those
19 of the said Southern Railway for delivery to the said Commission Houses or to plaintiff at its said yards, and wrongfully and unlawfully neglected, failed and refused, and still fails and refuses to transport switch or deliver livestock to the said Southern Railway Company at any point of physical connection in Louisville, Kentucky, between the tracks of the Louisville and the Nashville Railroad Company and those of said Southern Railway Company or to transport or switch or deliver the said livestock otherwise than as wrongfully desired and determined upon by the chief officers, agents

and employés of the said Louisville and Nashville Railroad Company, and to a stock yard other than that of the plaintiff.

Plaintiff further says that the railway system of the defendant, the Louisville and Nashville Railroad Company, extends through and over a large portion of the cattle and livestock raising sections of Kentucky and that a very large part of the livestock mar-
20 keted at stockyards in Kentucky must necessarily be shipped to market over the lines of the said defendant, the Louisville and Nashville Railway Company, and that by the wrongful and unlawful action of the said Louisville and Nashville Railroad Company, and by reason of the discrimination against plaintiff as aforesaid, all of said shippers, customers and patrons of the plaintiff and of the numerous commission merchants at the stockyards are required and compelled by the said Louisville and Nashville Railroad Company to consign their said livestock as directed by the said Louisville and Nashville Railroad Company and to a stockyard other than that of plaintiff and other than such as is desired by said shippers and livestock dealers.

That such arbitrary, unlawful and oppressive conduct and discrimination on the part of the defendant against the plaintiff and the shippers and dealers in livestock along its lines, and the announced purpose and expressed intention of defendant by written and verbal instructions to its agents and by its conduct as aforesaid and
21 by its declared intention to the plaintiff to continue to so fail, neglect and refuse to bill, transport, switch and deliver livestock consigned to the *Central Stock Yards Company* or in care of the same to the said Southern Railway Company at the said point of physical connection in Louisville, Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Railway Company unless immediately restrained and prevented will cause great and irreparable injury and *demand* to the plaintiff and its business.

Plaintiff says that it has no adequate or ample remedy at law for the injury to its business inflicted as aforesaid and threatened and complained of as hereinbefore alleged; and that if required to institute an action for damages upon each and every refusal of the defendant to transport, switch or deliver livestock as aforesaid, great delay will be occasioned to shippers and dealers in livestock
22 and to plaintiff in receiving the same for sale; and by the failure of plaintiff to receive the said livestock for care and attention and feeding thereof great damage will be done to plaintiff and suffering inflicted upon such livestock and the business of plaintiff will be disrupted and totally ruined; and separate and distinct actions will be wholly inadequate to the injury so inflicted.

Plaintiff further says that the failure and refusal of the defendant to transport, switch and deliver the aforesaid cars Nos. 19,583, 61,031, 61,032, 18,980, 18727, and 19570 have resulted in great and irreparable injury to plaintiff's business and have caused great and irreparable damage to plaintiff's business.

Plaintiff further says that its stockyards are very extensive and have been equipped at great expense as aforesaid and the opening

sales to be had thereat have been extensively advertised for Monday Novmber 4th, 1901 and all of the livestock consigned as afore-
23 said and in addition great quantities of other livestock that would have been consigned but for the wrongful acts of the defendant were to and have been ordered to be sold at said opening sales Monday, November 4th, 1901; that the sales to be had of the livestock consigned as aforesaid and to be sold at plaintiff's stockyards on said Monday, November 4th, 1901 are advertised to begin and will begin at or about the hour of 7 o'clock A. M. And that at said opening sales to be had at plaintiff's said stockyards on said day a large number of buyers have announced their purpose to be present to bid upon the livestock so offered for sale and to purchase the same; and that unless an immediate and mandatory order of injunction be entered and the defendant ordered and directed to deliver the aforesaid cars of livestock to plaintiff as instructed before the hour of the beginning of said sales, great and irreparable damage and injury will be done to plaintiff and its business.

Plaintiff and affiant states that the injunction herein sought and prayed for has never been refused by this court or by a judge
24 of this court or by any circuit judge or by any judge or officer whatsoever and that the injuries being inflicted upon the plaintiff and immediately threatened imperatively require that a mandatory order of injunction at once issue for and in its behalf and that greater injury will be inflicted upon it if is required to give notice of this application.

Plaintiff states that by reason of the refusal of the defendant to make delivery of the said livestock as ordered and as complained of herein, it has been damaged in the sum of $300 and if defendant carries out its announced purpose and expressed intention to continue in such refusal plaintiff will be damaged in the sum of $50,000.

Wherefore plaintiff prays that the defendant the Louisville and Nashville Railroad Company, be by a mandatory order required to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical con-
25 nection in Louisville, Kentucky, between the tracks of the said Louisville Nashville Railroad Company and those of the said Southern Railway Company in Kentucky for delivery by the said Southern Railway Company as ordered as aforesaid to the Plaintiff as Central Stockyards, Kentucky, or to any person or persons in care of said plaintiff at said Central Stockyards, Kentucky, or to whomsoever consigned at said station, the said cars Nos. 19,583, 61,031, 61,032, 18,980, 18,727, and 19,570, and the live stock that were consigned and contained therein; and further that the said defendant, the said Louisville and Nashville Railroad Company, be ordered and directed and required to receive, bill, transport, switch and deliver all live stock tendered or offered for delivery and shipment over its line to one of the points of physical connection in Louisville, Kentucky, between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Rail-

way Company in Kentucky for delivery by said Southern
26 railway Company at said Central Stockyards Kentucky, and to plaintiff or in care of plaintiff or any one at said station, or to whomsoever consigned at said Station, and that the said Louisville and Nashville Railroad Company be restrained and enjoined *for* neglecting, failing or refusing to receive, bill transport, switch or deliver any livestock to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville, Kentucky between the tracks of the Louisville and Nashville Railroad Company and the tracks of the Southern Railway Company in Kentucky for transportation and delivery by the said Southern Railway Company at Central Stockyards, Kentucky, to or in care of Plaintiff or to whomsoever consigned at said station.

Plaintiff further prays for judgment against the defendant for the sum of $300 actual damages already sustained and for all other necessary and proper relief, the premises considered.

W. M. SMITH,
DODD & DODD,
Att'ys for Plaintiff.

27 STATE OF KENTUCKY, *County of Jefferson, ss:*

B. H. Hurt on oath says he is the President and chief officer of the plaintiff in this state and that the statements of the foregoing petition are true as he verily believes.

B. H. HURT.

Subscribed and sworn to before me by B. H. Hurt this 4th day of November, 1901.

H. A. LINDSAY, *D. C.*,
For JNO. H. PAGE,
Clerk of Jefferson Circuit Court.

28 Thereupon on the 4th day of November, 1901, the Clerk issued summons and copy which said summons is as follows, to-wit:

Jefferson Circuit Court.

The Commonwealth of Kentucky to the Sheriff of Jefferson County, Greeting:

We command you to summon Louisville and Nashville Railroad Company, to answer a petition filed against it in our Jefferson Circuit Court, by Central Stock Yards Company, and warn it that upon failure so to do for twenty days after service hereof, if in Jefferson County, or for thirty days if elsewhere in the State, judgment may be rendered by default, or answer compelled, or proof taken at petitioner's option; and make due return hereof within sixty days from date hereof.

Witness, John H. Page, Clerk of said Court, this 4th day of November, 1901.

JOHN H. PAGE, *Clerk*,
By H. A. LINDSAY, *D. C.*

29 The return of the sheriff on the foregoing summons is as follows, to-wit:

Executed November 4th, 1901, on Louisville and Nashville Railroad Company, by delivering a copy of the within summons to Geo. Evans, Mgr. of said Company, he being chief officer found in this county at this time.

H. A. BELL, *S. J. C.*,
By W. D. RENFRO, *D. S.*

At a Court held on the 4th day of November, 1901:

The above styled action having been heard by the Honorable Emmet Field, one of the Judges of the Jefferson Circuit Court, and the petition and affidavit herein having been read and considered it is ordered that the defendant the Louisville and Nashville Railroad Company be and it is hereby required to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville,
30 Kentucky, between the tracks of the said Louisville and Nashville Railroad Company and those of the Southern Railway Company in Kentucky for delivery by said Southern Railway Company at Central Stock Yards Kentucky or to any person or persons at said Central Stock Yards Kentucky in care of said Central Stock Yards Company or to whomsoever billed or consigned at said station and to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Railway Company the livestock consigned and contained in Louisville and Nashville Railroad Company cars Nos. 19583, 16031, 61,032, 18980, 18727 and 19570, all consigned on November 2nd, 1901, for delivery at said Central Stock Yards, Kentucky.

The foregoing order will be issued by the Clerk and become
31 effective from and after the execution of bond on the part of plaintiff to the defendant conditioned as required by law in the sum of $1,000.00 to be approved by the Clerk of this Court and this action is assigned to the 12th day of November, 1901, before the Judge of the Jefferson Circuit Court to whom this action may be assigned, for hearing upon application to dissolve or motion to perpetuate the injunction herein.

EMMET FIELD,
Judge Jefferson Circuit Court, Common Pleas Division.

Thereupon on the 4th day of November, 1901, the following bond was executed and filed in the Clerk's office:

COMMONWEALTH OF KENTUCKY, *Jefferson County:*

Jefferson Circuit Court, Chancery Division.

30269.

THE CENTRAL STOCK YARDS CO., Plaintiff,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Injunction Bond.

32 We undertake that the plaintiff, The Central Stock Yards Company, shall pay to the defendant The Louisville and Nashville Railroad Company the damages not exceeding Ten Thousand ($10,000) Dollars, which it may sustain by reason of the injunction, if it is finally decided that said injunction ought not to have been granted.

CENTRAL STOCK YARDS COMPANY,
B. H. HURT, *President.*
THE AETNA INDEMNITY COMPANY,
By ALEXANDER GILMOUR, *Att'y in Fact.*

Attest:
JOHN H. PAGE, *Clerk,*
By H. A. LINDSAY, *D. C.*

Thereupon on the 4th day of November, 1901, the Clerk issued restraining order and copy, which said restraining order is as follows, to-wit:

33 Jefferson Circuit Court.

THE CENTRAL STOCK YARDS CO., Plaintiff,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO., Defendant.

Restraining Order.

The Commonwealth of Kentucky to the Sheriff of Jefferson County, Greeting:

The above styled action having been heard by the Honorable Emmet Field, one of the Judges of the Jefferson Circuit Court, and the petition and affidavit herein having been read and considered it is ordered that the defendant the Louisville and Nashville Railroad Company be and it is hereby required to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville, Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the Southern Railway Company in Kentucky

for delivery by said Southern Railway Company at Central Stock Yards Kentucky or to any person or persons at said Central
34 Stock Yards Kentucky in care of said Central Stock Yards Company or to whomsoever billed or consigned at said station and to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Railway Company the livestock consigned and contained in Louisville and Nashville Railroad Company cars Nos. 19583, 16031, 61,032, 18980, 18727 and 19570, all consigned on November 2nd, 1901, for delivery at said Central Stock Yards, Kentucky.

The foregoing order will be issued by the Clerk and become effective from and after the execution of bond on the part of plaintiff to the defendant conditioned as required by law in the sum of — to be approved by the Clerk of this Court and this action is assigned to the — day of November, 1901, before the Judge of the
35 Jefferson Circuit Court to whom this action may be assigned, for hearing upon application to dissolve or motion to perpetuate the injunction herein.

EMMET FIELD,
Judge Jefferson Circuit Court,
Common Pleas Division.

Witness, John H. Page, Clerk of said Court, this 4th day of November, 1901.

JOHN H. PAGE, *Clerk,*
By H. A. LINDSAY, *D. C.*

The return of the sheriff on the foregoing restraining order is as follows, to-wit:

Executed November 4th, 1901, at 5:15 A. M., Louisville and Nashville Railroad Company, by delivering a copy of the within order to George Evans, M'n'g'r of said company, he being chief officer found in said county at said time.

H. A. BELL, *S. J. C.,*
By W. RENFRO, *D. S.*

36 Thereupon on the 4th day of November, 1901, the following alias restraining order issued from the Clerk's office:

STATE OF KENTUCKY, *County of Jefferson:*

Jefferson Circuit Court.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Alias Restraining Order.

The Commonwealth of Kentucky to the Sheriff of Jefferson County, Greeting:

By Order of the Jefferson Circuit Court, Common Pleas Division:

The above styled action having been heard by the Honorable Emmet Field, one of the Judges of the Jefferson Circuit Court, and the petition and affidavit herein having been read and considered it is ordered that the defendant the Louisville and Nashville
37 Railroad Company be and it is hereby required to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville, Kentucky, between the tracks of the said Louisville and Nashville Railroad Company and those of the Southern Railway Company in Kentucky for delivery by said Southern Railway Company at Central Stock Yards Kentucky or to any person or persons at said Central Stock Yards Kentucky in care of said Central Stock Yards Company or to whomsoever billed or consigned at said station and to immediately transport, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville Kentucky between the tracks of the said Louisville and Nashville Railroad Company and those of the said Southern Railway Company the livestock consigned and contained in Louisville and Nashville Railroad Company cars Nos. 19583, 16031, 61,032, 18980, 18727 and 19570, all consigned
38 on November 2nd, 1901, for delivery at said Central Stock Yards, Kentucky.

The foregoing order will be issued by the clerk and become effective from and after the execution of bond on the part of plaintiff to the defendant conditioned as required by law in the sum of $1,000.00 to be approved by the Clerk of this Court and this action is assigned to the 12th day of November, 1901, before the Judge of the Jefferson Circuit Court to whom this action may be assigned, for hearing upon application to dissolve or motion to perpetuate the injunction herein.

EMMET FIELD,
Judge Jefferson Circuit Court,
Common Pleas Division.

Witness, John H. Page, Clerk of said Court, this 4th day of November, 1901.

JOHN H. PAGE, *Clerk,*
By H. A. LINDSAY, *D. C.*

The return of the sheriff on the foregoing alias summons is as follows, to-wit:

39 Came to hand Nov. 4th, 1901, at 12:25 P. M.

Executed November 4th, 1901, at 12:35 P. M. on Louisville and Nashville Railroad Company by delivering a copy of the within order to W. D. Hines, 1st Vice President of said Company, he being chief officer found in this county at this time.

H. A. BELL, *S. J. C.*,
By WM. H. DRESCHER, *D. S.*

Thereupon on the 11th day of November, 1901, the following amended petition was filed in the Clerk's office:

40 Jefferson Circuit Court, —— Division.

No. 30269.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Amended Petition.

Plaintiff, The Central Stock Yard Company, says that its original petition filed herein, was prepared in great haste, and that by reason thereof in the charges as to the duty, under the constitution and laws of the defendant to receive, transfer, transport, switch and deliver freight of every character to connecting carriers where there is a physical connection between the tracks of such connecting carrier and the tracks of the defendant, certain words and allegations intended to be written and made therein were, by oversight and

41 mistake, omitted, and it now amends its said petition in that respect as follows:

Plaintiff says that the defendant, as in its petition alleged, is a common carrier of passengers and freights of all kinds and descriptions, and is in law and equity, as well as under its charter and the laws of Kentucky, required and compelled to receive from all persons alike, without discrimination, freight of every character in carload lots or less quantities, and to receive, transfer, transport, switch and deliver same to connecting carriers where the place of delivery is on the line of such connecting carrier, and where there is a physical connection between its tracks and the tracks of such connecting carrier or carriers.

Plaintiff says that, as in its petition alleged, the defendant has announced its intention and purpose not to receive, transfer, transport, bill or deliver any livestock at any station on its lines consigned to any point of physical connection between its said lines and

42 the lines of the Southern Railway Company in Kentucky for delivery by said Southern Railway Company in Kentucky to said Central Stock Yards Company at Central Stockyards Kentucky, or to any one else at said station; and that the defendant has

instructed all of its agents and employés along its line of railway not to receive, bill, transport, transfer or deliver any livestock at any station on its lines consigned to any point of physical connection in Louisville, Kentucky, between its said tracks and the tracks of the said Southern Railway Company destined to anyone at Central Stockyards, Kentucky, or to the plaintiff, Central Stock Yard Company.

Plaintiff further says that, as in its petition alleged the refusals of the Louisville & Nashville Railroad Company, as aforesaid, to bill, transport, transfer, switch and deliver livestock as ordered, and its persistent refusal to bill, transport, transfer, switch and deliver livestock consigned to Central Stockyards, Kentucky, or to the
43 Central Stock Yards Company, or any person at said Central Stockyards station, or to bill, transport, transfer, switch or deliver livestock to any connecting line for delivery at said Central Stockyards station, or any person thereat, was and is arbitrary, unlawful and oppressive.

Plaintiff further says that the defendant, unlawfully and without authority of law refused and failed to bill livestock, or to transport, switch or transfer the same to the stockyards of the plaintiff, or to bill, transport, transfer or deliver said livestock to any connecting carrier at any point of physical connection between the tracks of the defendant and such connecting carrier for delivery by such connecting carrier to the consignee at said Central Stockyards, Kentucky, and still persists in its refusal to bill, transport, transfer or deliver livestock to any point of physical connection in Louisville, Kentucky, between its tracks and the tracks of the said Southern Railway Company in Louisville, Kentucky billed to con-
44 signees of such livestock at Central Stockyards station, and wrongfully and unlawfully failed and refused, and still fails and refuses to bill, transport, transfer, switch or deliver livestock to the said Southern Railway Company at any point or physical connection in Louisville, Kentucky, between its tracks and the tracks of the said Southern Railway Company in Louisville, or to transport, transfer, switch or deliver the said livestock otherwise than as wrongfully desired and determined upon by the chief officers, agents and employés of the said Louisville & Nashville Railroad Company to a stockyard other than that of the plaintiff.

Plaintiff further says that the refusal of the defendant to bill, transport, transfer, switch or deliver livestock consigned to the Central Stock Yards Company at Central Stockyards station in care of Central Stock Yard Company, and its refusal to bill, transport, transfer, switch and deliver livestock to said Southern Railway Company at one of the points of physical connection in Louis-
45 ville, Kentucky, between the tracks of the said Louisville & Nashville Railroad Company and the tracks of the Southern Railway Company in Kentucky has caused and occasioned great injury to the plaintiff and its business, and that unless restrained and prevented from so refusing to bill, transport, transfer, switch or deliver livestock so consigned to said Central Stockyard station, or to

plaintiff and all other persons thereat, will result in and cause great and irreparable damage to the plaintiff and its business.

Plaintiff further says that the failure and refusal of the defendant to transport, transfer, switch and deliver the cars mentioned in its original petition when and as ordered by the Court resulted in great injury to plaintiff and its business, and that the said defendant failed and refused to obey the order herein until after the sales' date mentioned in the said petition, and occasioned loss and injury to the plaintiff and parties interested in the said livestock.

Plaintiff further says that the defendant, Louisville &
46 Nashville Railroad Company, by reason of the points of physical connection, aforesaid, existing between its tracks in Louisville, Kentucky, and the tracks of the Southern Railway Company in Kentucky at Louisville, Kentucky, can, without any delay to its traffic, danger in the handling thereof, or inconvenience or expense, or delay in return of its empty cars, transport, transfer, switch and deliver livestock to the said Southern Railway Company in Kentucky in the cars of defendant for delivery by said Southern Railway Company to plaintiff at Central Stockyard Station, and to any and all persons to whom the same may be consigned at said station, as is the general custom in handling all kinds of freight at said connection, and is being done from day to day by the said Louisville & Nashville Railroad Company with the said Southern Railway Company in Kentucky, and all other railway companies in Kentucky at said points of physical connection between its tracks and those of the Southern Railway Company for transportation and de-
47 livery at other points in and out of Kentucky, and that by defendant making such transfer, switch and delivery to said Southern Railway Company at said points, or either of them, no unloading, charge or expense will be occasioned to the said Louisville & Nashville Railroad Company, or an- additional facilities of any character required or made necessary at such points of transfer for switching and delivery to said Southern Railway Company, and that thereby all stock raisers, stock dealers, commission merchants, and handlers of livestock will be enabled to transact their said business in the manner desired by them, and without injury to the said defendant.

Wherefore, plaintiff prays that the defendant, Louisville & Nashville Railroad Company, be, by mandatory order of injunction, require- to bill, transport, transfer, switch and deliver to the Southern Railway Company in Kentucky at one of the points of physical connection in Louisville, Kentucky, between the tracks of the said Louisville & Nashville Railroad Company and those of the
48 said Southern Railway Company in Kentucky at Louisville, Kentucky, for delivery by said Southern Railway Company, as may be ordered or instructed by shippers of livestock, either to the plaintiff, Central Stock Yards Company, or any person or persons in care of plaintiff, as ordered, at said Central Stockyards, Kentucky, or to whomsoever consigned at said station; and that defendant be restrained and enjoined from neglecting, failing or

refusing to receive, bill, transport, transfer, switch or deliver live-stock to the Southern Railway Company in Kentucky at Louisville, Kentucky, at one of the points of physical connection between the tracks of the Louisville & Nashville Railroad Company and the tracks of the said Southern Railway Company in Kentucky at Louisville, Kentucky, for transportation, transfer and delivery by said Southern Railway Company to Central Stockyards, Kentucky, to whomsoever consigned at said station, and it prays as in its original petition, and for all such further proper and equitable relief as the nature of the case may demand.

DODD & DODD,
W. M. SMITH,
Attorneys for Plaintiff.

49 B. H. Hurt says that he is the President and chief officer of the plaintiff, Central Stock Yards Company, and that the statements contained in the foregoing amended petition are true as he verily believes.

B. H. HURT.

Subscribed and sworn to before me, by B. H. Hurt, this 11th day of November, 1901.

My commission expires Jan. 17th, 1902.

D. P. YOUNG,
N. P., J. Co., Ky.

At a Court held on the 12th day of November, 1901:

Came plaintiff by counsel and filed the respective affidavits of R. C. Watkins, J. W. Byrne, H. T. Watts, Coleman Meriwether, B. H. Young, B. S. Josslyn, W. K. Morley, S. A. Stalcup, Edwin Fitzgerald, T. C. Powell, Charles Byrne, D. E. Garrett, J. J. Brown, W. F. Mattingly, W. S. Gambill, Dr. T. J. Turner, Charles Seffert, John M. Settle, Henry Just, J. B. Ohligschlager, Robert Hagan,
50 W. M. Hicks, J. E. Miller, J. T. Stewart, A. Sanders, J. L. Hart, John McCampbell, L. W. Burton, W. J. Byrne and James E. Wheeler herein.

And also filed three plats as exhibits herein.

And thereupon in pursuance of the notice contained in the temporary restraining order granted to it heretofore herein, and the prayer of its petition and amended petition herein, this day came plaintiff by counsel, and moves the Court to grant it, and that this Court issue against the defendant, Louisville and Nashville Railroad Company, a mandatory injunction requiring that said Louisville and Nashville Railroad Company be restrained and enjoined from neglecting, failing or refusing to receive, and that it (Louisville and Nashville Railroad Company) be required and compelled to receive, bill, transport, transfer, switch and deliver in the customary way any and all live stock and other freight consigned to the Southern Railway Company in Kentucky, at Louisville, Kentucky, at one of the

points of physical connection between the tracks of said
51 Louisville and Nashville Railroad Company, and said Southern Railway Company to plaintiff at Central Stock Yards Kentucky, or to whomsoever consigned at said station.

To which motion the defendant objects. Ordered that said motion be and is postponed to the 14th inst.

Ordered that leave be and is given both sides to file affidavits.

Said affidavits filed herein on the 12th day of November, 1901, are as follows, to-wit:

52 Jefferson Circuit Court, —— Division.

No. 2.

CENTRAL STOCK YARDS CO.
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, R. C. Watkins, states that he is Vice president and Traffic Manager of the Central Stock Yards Company, located on the line of the Southern Railway Company in Kentucky at Central Stock Yard station in Jefferson County, Kentucky; he says that he has just read and fully understands the facts as stated in the affidavit of J. W. Byrne of this date, made in this case, and that the statements contained therein are to his personal knowledge true.

53 Affiant further states that the track facilities at and around said yards are fully ample to accommodate all live stock necessary to be received at or shipped from said yards; that under the present arrangement and facilities they are prepared to load or unload cars at the rate of one hundred per hour after said cars are placed at said chutes.

Affiant further states that for seventeen years just prior to his connection with the plaintiff Company he was engaged in the traffic department of railroad companies and that by reason of said occupation he was brought into direct contact with, and has a personal knowledge of the proper handling of freight traffic of all descriptions inclusive of live stock, and that the facilities at the Central Stock Yards for safely caring for, handling and feeding live stock are superior to those existing in any other stock Yards, and the arrangement of said side tracks permit of the prompt and safe handling of all live stock in the loading and unloading of the same.

54 Affiant further states that he has had many communications from live stock shippers and dealers throughout the State of Kentucky who have expressed a desire to ship their stock to the Central Stock Yards Company at Central Stock Yards, Kentucky, and have been deterred therefrom by the action of the Louisville and Nashville Railroad Company in refusing to accept, bill or deliver such live stock in accordance with the wishes of said shippers to said Central Stock Yards station, or to the Southern Railway Com-

pany in Kentucky at Louisville, Kentucky for delivery to the Central Stock Yards Station, Ky., and to the Central Stock Yards Company.

Affiant further states that he as Traffic Manager of the Central Stock Yards Company had on two occasions prior to the institution of this suit called upon the President of the Louisville and Nashville Railroad Company, and urged upon him to accept at Stations on his line live stock for shipment and delivery at Central Stock Yards, and also that he should accept, bill, transfer, switch and de-
55 liver live stock of every kind to the Southern Railway Company in Kentucky, at Louisville, Ky., for delivery at said Central Stock Yards Station, and to the Central Stock Yards Company, but the President fails so to agree to do.

Affiant further says that in the construction and erection of the Central Stock Yards Company's plant at Central Stock Yards, Kentucky, it required a large number of car loads of lumber, brick, water-pipe, sewer pipe, cinders and building material of every character and that much of the said necessary material originated on the defendant Louisville and Nashville Railroad Company's lines and that said Louisville and Nashville Railroad Company freely billed, transported, transferred and switched its said cars to the Southern Railway Company in Kentucky at Louisville, Kentucky, for delivery to, and same were promptly delivered to said Central Stock Yards Company by said Southern Railway Company in Kentucky.

R. C. WATKINS.

56 Subscribed and sworn to before me, this the 9th day of November, 1901.

My commission expires January 12th, 1904.

CHARLES JOHANBOCKE,
Notary Public Jeff. Co., Ky.

57 Jefferson Circuit Court, —— Division.

No. ——.

CENTRAL STOCK YARDS COMPANY
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

The affiant, J. W. Byrne, says that he is the Superintendent of the Central Stock Yards Company, located on the line of the Southern Railway Company in Kentucky at Central Stock Yards Station in Jefferson County, Ky., that heretofore, to-wit, on the 20th day of May, 1901, the said Central Stock Yards Company purchased about twenty six acres of land in Jefferson County on said Southern Railway Company in Kentucky, for the purpose of constructing and putting in operation a modern and well equipped stock yard
58 plant; that since the organization of said company he has been and is now superintendent of said company, and

that said company since the purchase of said twenty six acres of land had constructed a modern and well equipped stock yard plant thereon, with stock pens and buildings for the carrying for, feeding and handling of live stock of every kind, covering about fourteen acres of land with the latest and most modern improvements for stock yard purposes, and the safe handling of live stock; that the said property was purchased for stock yard purposes in the quantity demanded by the said Central Stock Yard- Company and was the most available to be had in the quantity required, and could not be had in the City of Louisville or elsewhere; that said stock yards have cost in the construction thereof a large amount of money, to-wit: $150,000.00 to date, and will cost not less than $200,000.00 when all the outbuildings, offices and conveniences for commission merchants and stock dealers are completed; that said plant has for its use in the receipt and delivery of live stock of every character thereat
59 about 4,000 feet of sidings, switches and tracks; that it has constructed a native cattle department which consists of ten single and double deck chutes of the dimensions of 40 x 25 feet each, and 53 pens of the dimensions of 40 x 30 feet each, with the capacity of 40 cattle each at least, and 17 pens of the dimensions of 25 x 16 feet each, of the capacity of 20 cattle each, or a total capacity for native of 2,460; that in the said native cattle department there is also constructed 2 Fairbanks scales of the most modern and latest improved pattern one with the capacity of 81,000 pounds and the other 61,000 pounds, and in the said native cattle department there has also been constructed a hay pen of the dimensions of 30 x 30 feet, with the capacity for holding ten cars of hay; that it has also constructed under the regulations and requirements of the Government, and under plans approved by the Government a quarantine department for cattle which consists of 25 pens of the dimensions of 30 x 40 feet each, with a capacity of 40 cattle each, or an aggregate of at least 1,000 cattle; that it also has in the said quarantiue
60 cattle department 4 cattle chutes, one hay pen, one Fairbanks scales of the most modern and latest improved pattern with a capacity of 61,000 pounds; in the said department there is also a corn crib. Said quarantine cattle department in every respect has been approved by the United States Government Inspector.

Affiant further states that the said Central Stock Yards Company has also constructed two buildings known as buildings Nos. 2 and 3, or a hog and sheep department of the said yards; that in the down stairs department of the said hog and sheep department, buildings No. 2, there are 50 pens of the dimensions of 30 x 30 feet each, with a capacity for 150 each; eight pens of the dimensions of 11½ x 15 feet each, with a capacity of 40 each; and two pens of the dimensions of 29 x 8 feet, with a capacity of 50 each or an aggregate capacity in the said building No. 2, of about 8,000; and in the said department or building No. 2 there have also been constructed
61 2 corn bins, and one Fairbanks scale with the most modern and latest improvements, with a capacity of 61,000 pounds; that up stairs in said building No. 2 aforesaid, there are 32 pens of the dimensions of 30 x 30 feet each, with a capacity of 250 sheep

each; 12 pens of the dimensions of 25 x 50 feet each, with a capacity of 100 sheep each; 20 pens of the dimensions of 15 x 15 feet each, with a capacity of 60 sheep each; and 26 pens of the dimensions of 7½ x 12 feet each, with a capacity of 30 feet each, or a total capacity of 11,180 sheep. Also in the said building No. 2 there are 20 assorting pens of the dimensions of 7½ by 18 feet each, and in the upstairs of said building two pair of Fairbanks scales of the most modern and latest improved pattern, of a capacity of 61,000 pounds each; also 2 hay houses and 4 inclines for handling the said live stock; that it also has constructed in its said yards another house known as building No. 3 for the handling of hogs and sheep; that therein there are 17 pens of the dimensions of 30 by 27 feet
62 each, with a capacity of 125 each; and 25 pens of the dimensions of 7½ by 10 feet each, with a capacity of 20 each, or a total capacity in the said down stairs department or building No. 3 of 2,635; also one Fairbank's scale of the most modern and latest improved pattern of a capacity of 61,000 pounds; that in the said building, in the upstairs department thereof there are constructed 26 pens of the dimensions of 40 by 25 feet each, with a capacity of 150 each; and 20 pens of the dimensions of 28½ by 20 feet each, with a capacity of 100 each, or a total capacity of 5900. and in the upstairs department of said building No. 3 there has been constructed two corn cribs, and one Fairbank's scale of the most modern and latest improved pattern of a capacity of 61,000 pounds and that in connection with the said hog and sheep department there is now in course of construction 11 single and double deck chutes of the dimensions of 40 by 25 feet each.

Affiant further says that said yards have completed 10 sin-
63 gle and double deck chutes attached to the native cattle yards, and also 4 single chutes attached to the quarantine cattle department, all of which are complete; and that for the handling of cattle hogs and sheep ample facilities exist, with alley-ways and means of placing the same in the departments aforesaid constructed for them through the said building; that the alleyways and passages, together with the hog pens throughout the said building are paved with vitrified brick, and the said yards in every respect are the most modern and best equipped in the country.

He further says that the said stock yards company has a large number of commission stock men and brokerage firms at said premises, and the said company and the said brokerage firms have connections and business transactions with a large number of live-stock buyers, packers and dealers throughout the United States, and that in the State of Kentucky the Louisville and Nashville Railroad passed through a vast territory within which live stock is produced and offered for sale, amounting to at least fifty per cent. of
64 the live stock within the State of Kentucky, and that unless the Stock Yards Company can have deliveries of live stock made at said Central Stock Yards Station where its plant is situated, and receive fair and equal treatment with other stockyards in Kentucky that it will be damaged in many thousands dollars, and that its said damage will be incalculable, and not susceptible of measure-

ment by any actions for damage arising from the failure to bill or deliver a consignment from any point on the line of the said Louisville and Nashville Railroad Company to or from said Central Stock Yards, at Central Stock Yards Kentucky, or unless the said Louisville and Nashville Railroad Co. is required to switch, transfer and deliver all livestock to the Southern Railway Company in Ky. and all connecting lines consigned to Central Stock Yard, Ky., or any person or persons at said station.

J. W. BYRNE.

Subscribed and sworn to before me this 9th day of November, 1901.

CHAS. A. GRAHAM,
Notary Public, Jeff. Co., Ky.

65 Said affidavit of H. T. Watts filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

No. ——.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

H. T. Watts being duly sworn says that he is levelman and surveyor in the employ of the Southern Railway Company in Kentucky, and that under the instructions and directions of his superior officers in the employ of The said Southern Railway Company he has made a blue print or map showing the point of physical connection between the tracks connecting the Southern Railway Company in Kentucky and the Louisville & Nashville Railroad Company at 7th and Magnolia Streets the length of connection between the said two lines of railroad systems, which are respectively on the map
66 marked A. & B. and the distance from the one to the other is 2454 feet, as shown from the said map or blue print which is made a part hereof and marked for identity "Map or Blue Print No. 1;" and that there is also a siding or switch between the said two points of the length of 1172 feet; that the said siding or switch in the clear has a capacity of 22 cars, and that upon the said main connection there can be handled or placed at one time about 52 cars, making a total of 74 cars that can be handled or placed at said point of connection between the said two systems at one and the same time. He further says that the said map filed herewith is correctly made from a survey and accurately shown the trackage and facilities for connections between the said railway systems and the length of the said tracks and sidings, and is in every respect from actual measurement true and correct.

Coleman Meriwether being duly sworn says that he is draftsmen in the employ of the Southern Railway Company in Kentucky, and with H. T. Watts they have made a map or blue print
67 showing the tracks of the Louisville Railway Company in Kentucky which said map or blue print is filed herewith and made a part hereof, marked for identity "Map or blue print No. 2;" that thereon the yellow lines represent the tracks of the Louisville & Nashville Railway Company, the red lines the tracks of the Southern Railway Company and the green lines the tracks and crossings of the Louisville Street Railway Company, and that the 4th and "G" street connection between the Louisville & Nashville Railroad Company and the Southern Railway Company in Kentucky, as shown from said map, is about equally owned by the said Louisville and Nashville Railroad Company and the Southern Railway Company in Kentucky, as shown from the coloring indicating the said connection on said map, and is in length about 128 feet; and that the said map or blue print is correct and true in every respect, and accurately shown the trackage and connection of the said two systems at said point.

68 Said Watts and Meriwether further say that together the one assisted by the other, they have also made a map or blue print showing the intersection and crossings of the said two railway systems at about what is known as Floyd Street, which said map is filed herewith and made a part hereof, marked for identity "Map or blue print No. 3;" that upon the said map the yellow lines indicate the trackage of the Louisville & Nashville Railroad Company, the red lines thereon the main track sidings of the Southern Railway Company in Kentucky, and the green lines thereon the switching facilities incircling in part the plant of the Central Stock Yards Company, and also the Bergen and Mehan tracks or switch, and a portion thereof owned by the Southern Railway Company indicated in Red, and the portion thereof, 500 feet in length, which is the private switch or siding of the said Bergen & Mehan, and that upon the said Bergen & Mehan switch, as shown from the said map or plat, there is about 975 feet of the said siding owned by the
69 Southern Railway Company in Kentucky, which said switch forms a connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the Louisville & Nashville Railroad Company, as shown from said map, and is about 2200 feet from the station known as Central Stock Yards, Kentucky, as shown by said map.

H. T. WATTS.
COLEMAN MERIWETHER.

Subscribed and sworn to before me by H. T. Watts and Coleman Meriwether this 11th day of November, 1901.

My commission expires the 17th day of January 1902.

D. P. YOUNG,
Notary Public, Jefferson County, Kentucky.

Jefferson Circuit Court, —— Division.

70 No. ——.

THE CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO., Defendants.

Affidavit.

The affiant, Bennett H. Young, states that in June, 1887, and long prior and subsequent thereto he had official connection with both The Kentucky & Indiana Bridge Co., and the Louisville Southern Railroad Company, and that on June 21st, 1887, a contract was concluded and executed between the said Kentucky & Indiana Bridge Co. and the Louisville Southern Railroad Company, and that in said contract the following section appears, to-wit:

"Seventh: It is mutually agreed between the parties hereto that they will construct and complete, on or before September 1st, 1887, a single line of track with the necessary switches and sidings, eastwardly along Magnolia Avenue, from the junction of the Bridge Co.'s and the Railroad Co.'s tracks to connection with the
71 main tracks of the Louisville & Nashville Railroad Co. at or near the intersection of Magnolia Avenue and Seventh Street, the same to be constructed and maintained at the joint expense of the parties hereto, and operated by the railroad company in the manner herein described for the operation and maintenance of the railroad between Magnolia Avenue and the Railroad Company's yard between Market and Bank Streets."

He says that said junction between the said Louisville Southern Railroad Company's and the said Kentucky & Indiana Bridge Company's road, referred to in said section seven, was at a point known as the Twelfth and Magnolia Avenue junction; that the reason for the Louisville Southern Railroad Company insisting upon the right to operate trains in, upon and over said line to be constructed under the aforesaid contract, was, that it might have, and it did thereby acquire and use during the continuance of its corporate existence, said line as an independent physical connection between its tracks and those of the Louisville & Nashville Railroad Company. He says
72 that upon the purchase of the Louisville Southern Railroad Company by the Southern Railway Company in Kentucky all of the contractual rights, including those mentioned in section 7 in the aforesaid contract, and the independent use of the said tracks as a connection between the two railway systems passed to and became vested in the purchaser, The Southern Railway in Kentucky.

BENNETT H. YOUNG.

Subscribed and sworn to before me, this the 9th day of November, 1901.

CHAS. A. GRAHAM,
[SEAL.] *Notary Public, Jeff. Co., Ky.*

Said affidavit of B. S. Josselyn, filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of B. S. Josselyn.

73 Affiant, B. S. Josselyn, states that he is the Manager of the Kentucky and Indiana Bridge & Railroad Company.

Affiant further states that an examination of the records of the Ky. and Indiana Bridge and Railroad Company and other sources of information open to him, discloses the following state of facts:

There was a corporation styled the Kentucky & Indiana Bridge Company. This corporation had authority, under ordinances of the City of Louisville and certain contracts with individuals, to build a road along Magnolia Avenue in the City of Louisville from Eighteenth Street east to and connection with the Louisville & Nashville Railroad Company at Seventh and Magnolia.

The Louisville Southern Railroad Company was a railroad corporation which built a line into Louisville, connecting with the Kentucky & Indiana Bridge Company's tracks in Magnolia Avenue between Eleventh and Twelfth Streets.

On June 21, 1887, a certain contract was entered into be-
74 tween the Kentucky & Indiana Bridge Company and the Louisville Southern Railroad Company, by which the Louisville Southern Railroad Company acquired the right to use certain parts of the tracks of the Kentucky & Indiana Bridge Company. Among other articles of said agreement was the following:

"7. It is mutually agreed between the parties hereto that they will construct and complete, on or before September 1, 1887, a single line of track, with the necessary switches and sidings, eastwardly along Magnolia Avenue from the junction of the Bridge Company's and the Railroad Company's tracks to a connection with the main tracks of the Louisville & Nashville Railroad Company, at or near the intersection of Magnolia Avenue and Seventh Street; the same to be constructed and maintained at the joint expense of the parties hereto, and operated by the Railroad Company in the manner herein described for the operation and maintenance of the Railroad between Magnolia Avenue and the Railroad Company's yards between Market and Bank Streets."

75 The property of the Louisville Southern Railroad Company was acquired by a corporation styled the Southern Railroad Company in Kentucky. The property owned by the Kentucky & Indiana Bridge Company was acquired by a corporation called the Kentucky & Indiana Bridge and Railroad Company, of which affiant is the Manager.

Affiant states that when he became Manager, in February, 1900, he found in existence a main track and sidings and certain switches on Magnolia Avenue, connecting with the track of the Louisville & Nashville Railroad Company at Seventh and Magnolia Avenue and running to a connection with the track of the Southern Railway Company in Kentucky on Magnolia Avenue between Eleventh and Twelfth Streets, which were being used and operated over by the Southern Railway Company in Kentucky; and that said track was being maintained at the joint expense of the bridge company and the Southern Railway Company in Kentucky, but was operated solely by the Southern Railway Company in Kentucky.

76 Since then the said track has been used by the Bridge Company and the Southern Railway Company in Kentucky, for an interchange of traffic with the Louisville & Nashville Railroad Company at Seventh and Magnolia; the Kentucky & Indiana Bridge and Railroad Company and the Southern Railway Company in Kentucky each having the recognized right, at its option, to use and operate the same with the engines and cars of either company, and so using the same for the interchange of traffic with the Louisville & Nashville Railroad Company at the connection aforesaid Seventh and Magnolia Avenue.

Affiant further says that at this time the said Track and connection is being used for the interchange of all classes of freight between the said Louisville & Nashville Railroad Company and the said Southern Railway Company in Kentucky.

Affiant further states that livestock in carloads is being interchanged at Seventh and Magnolia Street connection between the Louisville & Nashville Railroad Company, the Baltimore & Ohio Southwestern; Chicago, Indianapolis & Louisville, the South-

77 ern Railway Company in Kentucky in both directions, and that the said Southern Railway Company in Kentucky has trackage facilities, at said point of interchange, to handle a large number of cars daily, and that the facilities mentioned are adequate in every way to handle any and all business that may be offered for interchange at that point.

B. S. JOSSELYN.

Subscribed and sworn to, before me, by B. S. Josselyn this 9th day of November, 1901.

My commission expires the 12th day of January 1904.

T. W. SPINDLE,
N. P. J. Co., Ky.

78 Jefferson Circuit Court, —— Division.

No. ——.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant, W. K. Morley, says that he is Superintendent of the Southern Railway Company in Kentucky, and has charge of the operation of its trains in Kentucky and in Louisville, Kentucky, and that the Southern Railway Company in Kentucky is interchanging cars, loaded and empty, daily in Louisville, Kentucky, with the Louisville & Nashville Railroad Company, and that at the present time practically all of the freight traffic so interchanged is at the Seventh & Magnolia connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the Louisville & Nashville Railroad Company, but that it is true that there is also a physical
79 connection between the tracks of Southern Railway Company in Kentucky and the Louisville & Nashville Railroad Company at Fourth and "G" street in the City of Louisville, Kentucky, which is commonly known as the Fourth Street connection; and he further says that said Southern Railway Company in Kentucky is prepared to, and has facilities for receiving any number of cars of any and every character of freight that may be delivered to said Southern Railway Company in Kentucky by the said Louisville & Nashville Railroad Company.

He further says that he has read the affidavits of Edwin Fitzgerald and T. W. Powell, and from his superior officers has received, in the regular way, notice of the establishment of a station on the line of the Southern Railway Company in Kentucky, in Jefferson County, Kentucky, and known as Central Stockyards, Kentucky, and has likewise, in the regular way received notice of the switching arrangement for delivery from connecting carriers of livestock at said Station, Central Stock Yards, Kentucky, and that his said Railway Company has facilities for and is fully able and willing to
80 receive and deliver, in accordance with the said circular and notices, all livestock to said Central Stock Yards Company at Central Stockyards station.

Affiant further says that livestock is being delivered by the Southern Railway Company in Kentucky to the Louisville & Nashville Railroad Company at Seventh and Magnolia Street connection coming to the City of Louisville over the Southern Railway Company in Kentucky, and for delivery at any point in Louisville, Kentucky, reached by the Louisville & Nashville Railroad Company.

W. K. MORLEY.

Subscribed and sworn to, before me by W. K. Morley this 9th day of November 1901.

My commission expires the 12th day of Jan. 1904.

CHARLES JOANBACKE,
Notary Public, Jefferson Co., Ky.

81 Jefferson Circuit Court, —— Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

The affiant S. A. Stalcup, says that he is the Train Master of the Louisville Southern Railway Co. in Kentucky, and as such is charged with the duty of looking after and supervising the movements of trains and cars over the lines and terminals of the Southern Railway Company in Kentucky at Louisville or what is known as the Louisville Division of said Railway system.

Affiant further states that it is the custom and daily practice of the Southern Railway Company in Kentucky at Louisville to deliver to the Louisville & Nashville Railroad Company at its connections with said Railway system loaded cars of the said Southern Railway
82 Company for points on the line of the Louisville & Nashville Railroad; and that it constantly delivers live stock loaded at points on its lines in Southern Railway Company's cars and destines to the Bourbon Stock Yards at Louisville, Ky., located on the Louisville & Nashville Company's tracks, which said cars are transported, transferred and delivered to said Bourbon Stock Yards by the Louisville & Nashville Railroad Company; and that constantly carload lots of live stock originating at the Bourbon Stock Yards are transported, transferred, switched and delivered at the points of Physical connection between the said Southern Railway Company in Kentucky and The Louisville and Nashville Railroad Co., destined to other points in and out of Kentucky.

The affiant further states that the point of physical connection between the tracks in Louisville, Ky., on The Southern Railway Company in Kentucky, and the Louisville & Nashville Railroad Company at 7th and Magnolia Streets, is about a mile and a half from what is known as Central Stock Yard Station, Kentucky, and
83 that to receive, transport, transfer and deliver a car or cars of live stock at said point of physical connection from the Louisville & Nashville Railroad, and the delivery thereof at Central Stock Yards Station, Kentucky, and the return of the empty cars so received from said Louisville & Nashville railroad Company at said point of connection required from an hour to not exceed two hours, and that on the 5th day of November, 1901, the said Louisville and Nashville Railroad Company did place upon the switch at the point of physical connection at 7th and Magnolia Streets, Louisville, Ken-

tucky, car loads of live stock at 1:02 P. M. destined to Central Stock Yards Station, Kentucky; that the same were removed by the said Southern Railway Company in Kentucky at 1:10 P. M., and delivered at Central Stock Yards Station at 1:25 P. M., and thereafter the empties were returned to the said point of connection aforesaid, and deliver- to the Louisville & Nashville Railroad Co. at 2:40 P. M. consuming an hour and thirty eight minutes from the time of delivery upon the switch of the Southern Railway Company in
84 Kentucky by the Louisville and Nashville Railroad Company, and the time of the re-delivery of the empty to the Louisville & Nashville Railroad Company at said point.

Affiant further says that live stock originating at point- on the line of The Southern Railway Company in Kentucky, is transported, transferred, switched and delivered without discrimination whether the same is destined to the Bourbon Stock Yards in Louisville, Ky., or the Central Stock Yards at Central Stock Yard Station in Jefferson County, Kentucky. Affiant further says that the trackage and switching facilities of the Southern Railway Company in Kentucky at Louisville are adequate and sufficient for the prompt transfer and delivery of any and all live stock that may be destined for any point on its line including the Central Stock Yards station, Ky., and that after delivery by such connecting carrier of livestock or freight at such point of connection no further service is required by the carrier upon whose line such freight originated.

S. A. STALCUP.

85 Subscribed and sworn to before me this the 11th day of November, 1901.

My commission expires Jany. 13th, 1904.

CHAS. A. GRAHAM,
Notary Public Jeff. Co., Ky.

Said affidavit of Edwin Fitzgerald filed on the 12th day of November, 1901, is as follows:

Jefferson Circuit Court, —— Division.

No. ——.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant, Edwin Fitzgerald, says he is Assistant General
86 Freight Agent of the Southern Railway Company in Kentucky, and that by authority of the chief officers of the Southern Railway Company in Kentucky they, on November 1, 1901, established on its line of Railway in Kentucky a Station known as

Central Stock Yards Ky., and about nine miles from its terminus in Louisville, Kentucky, and in Jefferson County, Ky., and that by authority of the said officers, on November 1, 1901, Mr. J. H. Ashkraft, Jr., was duly and regularly appointed as Station Agent at said Station, Central Stock Yard, Kentucky, and that on October 31, 1901, in pursuance to the orders and instructions of the chief officers of the said Southern Railway Company in Kentucky, notice was given, known as circular No. D 3, by said Southern Railway Company in Kentucky to its agent and connections, including the Louisville & Nashville Railroad Company, of the establishment of said Station on November 1, 1901, and the appointment of the said J. H. Ashcraft, Jr., aforesaid, as station agent at said station; and further that on October 31, 1901, in accordance with the orders and directions of the chief officers of the said Southern Railway
87 Company in Kentucky there was issued by the said Southern Railway Company in Kentucky tariff basis for making and dividing rates to and from Central Stock Yards, Kentucky, and to and from all its stations and connections which said circular was and is known as rate basis No. D. 4, and division basis No. D. 5, all of which said circulars aforesaid have been duly mailed and delivered to the agents of the said Southern Railway Company in Kentucky and connections therewith including the Louisville and Nashville Railroad Company, and he files herewith and makes a part hereof copies of the aforesaid notices and circulars marked for identity, "Circular No. D 3, Basis No. D 4, Division Basis No. D 5."

He further says that said Central Stock Yards, Kentucky, is now an existing station on the lines of the Southern Railway Co. in Kentucky, and has been since November 1, 1901, and that said J. H. Ashcraft, Jr., has regularly accepted the appointment as its
88 agent at said station, is now and has been such agent since November 1, 1901.

EDWIN FITZGERALD.

Subscribed and sworn to, before me, by Edwin Fitzgerald this 9th day of November, 1901.

My commission expires the 1st day of January, 1904.

CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

Filed on 12th day of November, 1901, is as follows:

Circular No. D-3.

Southern Railway Company in Kentucky (Incorporated).

St. Louis-Louisville Lines.

LOUISVILLE, KY., *October* 31*st*, 1901.

89 To Agents and Connections:

Effective November 1st, 1901, a station will be established at Central Stock Yards, Ky., 9 miles East of Louisville, *by* Mr. J. H. Ashcraft, Jr., has been appointed as agent.

Connections will please arrange to revise tariffs and division sheets accordingly.

EDWIN FITZGERALD,
Assistant General Freight Agent, Louisville Division.
R. A. CAMPBELL,
Assistant General Freight Agent, Louisville Division.

Filed on November 12th, 1901, is as follows:

Rate Basis No. D-4.

Division Basis No. D-3.

Southern Railway Company in Kentucky (Incorporated).

90 St. Louis-Louisville Lines.

Traffic Department Basis.

For Making and Dividing Rates to and from Central Stock Yards, Ky., on Classes and Commodities Totals.

Apply Louisville, Ky., rates to and from all points on Southern Railway, St. Louis-Louisville Lines, also to and from all points on connecting lines where traffic is handled via Southern Railway, St. Louis Louisville Lines Junction Points, except Louisville, Ky.

On traffic originating at or destined to points on B. & O. S. W. Ry., C. I. & L. Ry., L. & N. R. R., I. C. R. R. and L. H. & S. T. L. Ry., delivered to or received from Southern Railway at Louisville, Ky., add One Dollar ($1.00) per car to the Louisville rate.

91 Divisions.

Via Louisville, Ky., allow Southern Railway in Kentucky, $1.00 per car.

Via other Junction allow Southern Railway, St. Louis-Louisville Lines proportion of Louisville proper rates.

Issued October 31, 1901.

By Edwin Fitzgerald, Assistant General Freight Agent, Louisville, Ky.

Effective November 1st, 1901.

R. A. Campbell, Ass't Gen. Freight Ag't, St. Louis, Mo.

EX. List; TCP 3 EAN 5 ETJ 8 JJH 4 RAC 200 RJC 3 JDD 3. All connections St. Louis-Louisville Lines 3 each. All agents Southern Railway in Ky. 3 each. ILE 27062-B.

Affidavit of T. C. Powell filed on the 12th day of Novem-
92 ber, 1901 is as follows:

Jefferson Circuit Court, —— Division.

No. —.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

The affiant, T. C. Powell, says that he is Assistant Freight Traffic Manager of the Southern Railway Company, and the Southern Railway Company in Ky.; that on October 5th, 1901, he as Assistant Freight Traffic Manager of said Railway notified by letter Mr. D. M. Goodwin, General Freight Agent of the Louisville and Nashville Railroad Company at Louisville, Kentucky, as follows:

OCTOBER 5TH, 1901.

7753 A Mr. D. M. Doodwyn, General Freight Agent, Louisville, Ky.

DEAR SIR: Rate Adjustment: Rates on live stock to and from Central Stock Yards, Louisville, Ky.

93 I beg to advise that we have just been officially notified that The Central Stock Yard Company, whose yards at South Louisville have been selected as our livestock depot in Louisville, will be ready for business November 4, 1901, and the first sales day will be Monday, November 4th, 1901.

The Southern Railway has arranged with the Central Stock Yards Company to perform switching between their yards and connecting points on other lines in Louisville, the tariff on stock to and from your line being as follows:

Between L. & N. Railroad at Fourth Avenue and Central Stock Yards Company $1.00 per car.

Between L. & N. Railroad at 7th and Magnolia and Central Stock Yards Company, $2.00 per car.

This charge covers cost of handling the loaded car in one direction and the return of the empty car in the reverse direction.

Please be advised that on and after November 1, 1901, we will receive from your line at either one of the above connecting
94 points all live stock tendered us for delivery to the premises of the Central Stock Yards Company, and will be responsible for such delivery, and the collection of your charges on same in the usual way.

Will you please advise all interested to the above effect?

We shall be glad to have you indicate in your live stock tariffs showing rates to and from Louisville, or by circular, that live stock may be handled to and from the Central Stock Yards Company in connection with the Southern Railway."

Similar notices dated October 5th were sent to the Freight Traffic officers of the other line- connecting with the Southern Railway Company in Louisville.

Affiant further states that he has since been advised that the Central Stock Yards Company is located at a point on the lines of the Southern Railway Company in Jefferson County, and not in the City of Louisville.

95 Affiant further says that he authorized the publication of circulars D 3 dated October 31, signed jointly by Edwin Fitzgerald, assistant Freight Agent, Louisville Division, and R. A. Campbell, Assistant Freight Agent, St. Louis Division.

He further states that subsequent to his notice of October 5th, in regard to the switching to be performed to the Central Stock Yards Co.'s plant, acknowledgments were received from the following: J. B. Hill, General Freight Agent, P. C. C. and St. L. under date of October 11th; F. M. Whitaker, Freight Traffic Manager, Chesapeake & Ohio, under date of October 9th; E. F. Cost, Freight Traffic Manager, Cleveland, Cincinnati, Chicago and St. Louis Railway Company; F. B. Bowes, General Freight Agent Illinois Central Railroad Company, and in the course correspondence communications in regard to the establishment of rates on live stock based on said notice of October 5th were received from C. H. Rockwell, Traffic Manager, Chicago, Indianapolis & St. Louis Railway Company; L. J.

96 Irwin General Freight Agent Louisville, Henderson and St. Louis Railway Company; S. T. McLaughlin, General Freight Agent of the B. O. & S. W.; but no response was received from the Louisville and Nashville Railroad Company.

Affiant further states that under date of October 31 he received and acknowledged a letter dated October 31, 1901, signed D. M. Goodwyn, General Freight Agent, reading as follows:

"LOUISVILLE, KENTUCKY, *October* 31, 1901.

Mr. T. C. Powell, A. F. T. M., Southern Ry., Louisville, Ky.

DEAR SIR: Delivery of live stock at Louisville. I beg to hand you herewith copy of our circular N. S. 1154 of October 16th, with respect to the issuance of live stock contracts covering specific delivery within the City of Louisville and shall be glad to have you give your agent and representative such instruction as may be necessary to have this circular complied with. Kindly acknowledge receipt of this circular by bearer and advise if you will comply with our request:

Said circular is as follows:

"Louisville & Nashville R. R. Co. Office of the General Freight Agent. Circular N. S. No. 1154. (Cancels Circular No. N.

97 S. 956 of 10/11/1900.)

LOUISVILLE, KENTUCKY, *October* 17*th*, 1901.

Delivery of livestock at Louisville, Ky.

To agents and connections:

In accepting shipment of live stock destined to Louisville, Kentucky, via this Company's lines Agents and Connections must ex-

ercise particular care and see that no agreement appear in the contract to make delivery on any specific switch or siding in the City of Louisville.

Shipment may, however, be consigned (as heretofore) to the care of firms or individuals at Louisville, Ky., but no contracts calling for delivery at any special switch or siding must be made or issued.

(Signed) G. M. GOODWYN,
General Freight Agent.

Affiant further says that on October 26th, 1901, he received and acknowledged the following letter dated October 25th, 1901,
98 signed by Mr. Oscar Fenley, President of the Bourbon Stock Yard Company:

"LOUISVILLE, *October 25th,* 1901.

T. C. Powell, Esq., Asst. Freight Traffic Manager, Southern Railway Co., Louisville, Ky.

DEAR SIR: An arrangement has been effected by which the Louisville & Nashville Railroad Company will receive live stock at 14th and Ormsby Ave., and transfer it over the Dumesneil switch to the Bourbon Stock Yards, to be moved for $1.00 per car.

I am advised that your company can, if it chose, avail itself of the decreased rate and the improved service by delivering at Ormsby Ave. connection."

Affiant further says that on October 26th, 1901, he addressed the following communication to Mr. D. M. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad Company, Louisville, Ky.:

"OCTOBER 26TH, 1901.

Mr. D. M. Goodwin, G. F. A., Louisville, Ky.

98½ DEAR SIR: Transportation: Switching at Louisville.

I am just in receipt of advice from the Bourbon Stock Yards that your switching rate from 14th and Ormsby Avenue to the Bourbon Stock Yards have been reduced to $1.00 per car.

Will you kindly advise if this information is correct and to what extent the switching rate will apply on business delivered you by the Southern Railway."

The following response was received from Mr. Goodwin, dated November 1st, 1901.

"Yours of the 26th. filed 44-A. In reply thereto, beg to advise that under date of October 14th. I advised your Mr. Fitzgerald as follows:

"This is to advise you that effective on the 17th. inst. the L. & N. switching charge for handling stock between the Bourbon Stock Yards and the connecting point of interchange with L. & N. tracks will be $1.00 per car. This charge has heretofore been $2.00 per car. Please acknowledge receipt." Yours truly, D. M. Goodwyn, G. F. A."

This notice of the Louisville & Nashville Railroad Com-
99 pany did not indicate any change in the policy of that Company in the matter of switching livestock coming from points competitive with that road and was, therefore understood to mean that the reduction would apply only on livestock coming from local stations on the Southern Railway in Kentucky.

T. C. POWELL.

Subscribed and sworn to, before me, this 12th day of November, 1901, by T. C. Powell.

My commission expires 12th day of January, 1901.

CHAS. JOHANBOCKE,
Notary Public, Jefferson County, Kentucky.

Said affidavit of Charles Byrne filed on the 12th day November, 1901, is as follows:

100 Jefferson Circuit Court, —— Division.

No. ——.

CENTRAL STOCK YARDS COMPANY
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO.

Affidavit.

The affiant, Charles Byrne, states that he has read the affidavit of J. W. Byrne, a brother of this affiant, and knows of his own personal knowledge the facts stated therein to be true, and he further says that he has been for many years actively engaged in the livestock business in Louisville, Ky., and elsewhere and is personally acquainted with a large majority of the livestock dealers in Ky., and that he likewise has a personal knowledge of the facilities at stock yards throughout the country for feeding, handling and caring for livestock with safety, including the loading and unloading thereof, and that he has a personal knowledge of the facilities for
101 loading, unloading, caring for and feeding livestock by the Central Stock Yards Company, and that the facilities possessed by said Central Stock Yard Company for loading, unloading, caring for and marketing livestock are equal to, if not superior to those possessed by any stock yards in this country; and he further says that he personally knows that the said Central Stock Yards Co. is connected with the leading packers and buyers of live stock throughout the country, and that they are anxious to do business with Commission merchants at said Central Stock Yards, and to sell and buy stock thereat, and that the Central Stock Yard Company has as its patrons and dealers commission merchants and live stock purchasing agents who furnish for livestock raisers and dealers the best market to be had in Kentucky.

CHARLES BYRNE.

Subscribed and sworn to before me this 9th day of November, 1901.

CHAS. A. GRAHAM,
Notary Public, Jeff. Co., Ky.

102 Said affidavit of D. E. Garrett filed on the 12th day of November, 1901, is as follows:

Jefferson Circuit Court, —— Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant, D. E. Garrett, states that he is a citizen and resident of the State of Tennessee, and is now and has been for some time past engaged in the business of raising, feeding and selling livestock on the markets of Kentucky, and that on November 2nd, 1901, at Adairville, Kentucky, a station on the line of the Louisville and Nashville Railroad Company, he tendered to said Louisville and Nashville Railroad Company at said station and its agent
103 thereat, one car load of livestock for shipment which was loaded in one of said Company's cars # 18980, and that he requested and directed the agent at said station of the said Louisville and Nashville Railroad Company to bill the same to himself care of Martin Byrne & Company at Central Stock Yards, Kentucky, via The Southern Railway Company, at Louisville, Kentucky, and its said agent neglected, failed and refused to so bill, ship or deliver said livestock, but did bill said livestock to him, the said D. E. Garrett, care of Martin Byrne and Company, Louisville, Ky., and refused to bill them otherwise or to observe the instructions given for the billing and shipment thereof, and that said Louisville and Nashville Railroad Company neglected, failed and refused to deliver said livestock as directed, but did, unlawfully and without authority or instructions and against affiant's wishes and directions, deliver said livestock to the Bourbon Stock Yards in Louisville, Ky., where it remained until said Louisville and Nashville Railroad Company was compelled herein to deliver same as directed.

D. E. GARRETT.

104 Subscribed and sworn to, before me, by D. E. Garrett, this 9th day of November, 1901. My commission expires the 12th day of January, 1904.

CHAS. JOHANBOCKE,
Notary Public, Jefferson County, Kentucky.

Said affidavit of J. J. Brown filed on the 12th day of November 1901 is as follows, to-wit:

Jefferson Circuit Court, —— Division.

No. ——.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

105 Affiant, J. J. Brown, states that he is a citizen and resident of the State of Kentucky, and is now and has been for some time past engaged in the business of buying and selling livestock on the markets in Kentucky; that on November 2nd, 1901, at Woodlawn, Kentucky, a station on the line of the Louisville and Nashville Railroad Company, he tendered to the said Louisville and Nashville Railroad Company and its agents at said station, one car load of livestock for shipment to himself (J. J. Brown), Central Stock Yards Company, Kentucky, care Southern Railway Company, with instructions to said Railroad and its said station agent to so bill, ship and deliver said stock, and that said railroad did then receive said stock under said instruction and did bill them as directed and loaded them in one of its cars, No. 19570, and did so bring said stock over its road to Louisville, Ky., but failed to deliver same as instructed, but contrary thereto and against affiant's wishes and instruc-
106 tions delivered same at the Bourbon Stock Yards in Louisville, Ky. and failed and refused to deliver same at the Central Stock Yards, Kentucky or to the Southern Railway Company to be by said Southern Railway Company delivered at said Central Stock Yards, Kentucky, and so continued, failed and refused to deliver said stock as directed, or to remove same from said Bourbon Stock Yards, until compelled by the Court to deliver the same as instructed, and as it had agreed to do.

Affiant further says that he has been engaged in the livestock business for years, and that he has examined the stock yard plant of Central Stock Yards Company and that it is a modern plant, with first class facilities for safely loading, unloading and caring for livestock, and as a shipper he has desired to and wishes to do business therewith.

J. J. BROWN.

Subscribed and sworn to, before me by J. J. Brown this the 11th day of November, 1901. My commission expires the 17th day of January, 1902.

107 D. P. YOUNG,
Notary Public for Jefferson County, Ky.

Said affidavit of W. S. Mattingly filed on the 12th day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant W. F. Mattingly, states that he is a citizen and resident of the State of Kentucky, and is now and has been for some time past engaged in the business of buying live stock and selling
108 same on market in Kentucky and that on November 2, 1901, at Loretto Kentucky, a station on the line of the Louisville and Nashville Railroad Company, he, in the firm name of Mattingly and Beaven, tendered to said Louisville and Nashville Railroad Company at said Station, and its agent thereat, one car load of live stock for shipment, and that after the said car load of live stock was loaded in Louisville and Nashville car No. 19582 he requested and directed the agent at said station of said Louisville and Nashville Railroad Company to bill the same to Mattingly and Beaven, Central Stock Yards Kentucky, via Southern Railway Company at Louisville, Kentucky but that the said Louisville and Nashville Railroad Company and its agents, neglected, failed and refused to ship said car load of stock but billed the same to Mattingly and Beaven, care Central Yards Louisville, Kentucky, and refused to bill them otherwise or to observe the instructions given for the billing
109 and shipment thereof, and contrary to the wishes and against the directions of affiant neglected, failed and refused to deliver the same to Central Stock Yards Kentucky, care Central Yards Company or to deliver the same to the Southern Railway Company at Louisville, Kentucky, for delivery at said Central Stock Yards Station care Central Yards Company, but against the wishes and specific instructions of affiant wrongfully delivered the same at the Bourbon Stock Yards in Louisville, Kentucky, and not as directed by affiant, at Central Stock Yards Kentucky as per bill therefor; and said defendant continued to fail and refuse to deliver said stock as demanded, or remove same from said Bourbon Stock Yards in Louisville, Kentucky, to Central Stock Yards Kentucky Station, or to the Southern Railway Company in Louisville, Kentucky, for delivery to Central Stock Yards, Kentucky station or deliver the same in care of Central Yards as billed until compelled by the Court to so deliver same.

W. F. MATTINGLY.

110 Subscribed and sworn to before me by W. F. Mattingly this the 9th day of November, 1901.
My Commission expires the 12th day of January, 1904.

CHARLES JOHANBOCKE,
N. P., J. Co., Ky.

Affidavit of W. S. Gambill filed on the 12th day of Nov. 1901 is as follows:

Jefferson Circuit Court, —— Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant W. S. Gambill, states that he is a citizen and resident of the State of Kentucky and is now and has been for some
111 time past engaged in the business of buying live stock and selling same on the market of Kentucky, and that on November 2nd, 1901, at Adairville, Kentucky a station on the line of the Louisville and Nashville Railroad Company, he tendered to said Louisville and Nashville Railroad Company at said Station and its agents thereat, two car loads of live stock for shipment which were loaded in Louisville and Nashville Railroad Cars No. 61031 and 61032, and that he requested and directed the agent, at said station of said Louisville and Nashville Railroad Company to *build* the same to himself care Martin Byrne and Company at Central Stock Yards, Kentucky, via Southern Railway Company at Louisville, Kentucky, but that said Louisville and Nashville Railroad Company and its agents neglected, failed and refused to so bill, ship or deliver said livestock, but did bill the said livestock to him W. S. Gambill at Louisville, Kentucky, care Martin Byrne and Company and
112 refused to bill them otherwise or to observe the instructions given for the billing and shipment thereof, and that said Louisville and Nashville Railroad Company neglected, failed and refused to deliver said livestock as directed, but did, unlawfully and without authority or instructions and against affiant's wishes and directions deliver the said livestock to the Bourbon Stock Yords in Louisville, Kentucky, where it remained until said Louisville and Nashville Railroad Company was compelled by the Court herein to deliver same as directed.

W. S. GAMBILL.

Subscribed and sworn to before me by W. S. Gambill this the 9th day of November, 1901.
My commission expires the 12th day of January, 1904.

CHARLES JOHANBOEKE,
N. P., J. C., Ky.

113 Said affidavit of T. J. Turner filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

No. —.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

Affiant, Dr. T. J. Turner states that he is an inspector under the Department of Agriculture and Bureau of Animal Industry for the United States and that he has examined fully the Central Stock Yards Company's plant as now constructed in Kentucky at what is known as Central Stock Yards, Kentucky, and that he found the same in excellent condition for the purposes for which it is designed,
and that said plant, together with its quarantine quarters
114 and arrangements meet all the requirements of the laws of
the United States and is perfectly satisfactory as such, and has been so accepted by him.

T. J. TURNER.

Subscribed and sworn to, before me by Dr. T. J. Turner, this 11th day of November, 1901.
My commission expires the 17th day of January, 1902.

D. P. YOUNG,
Notary Public, Jeff. Co., Ky.

Affidavit of Charles Leffert filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

115 Affiant, Charles Leffert, states that he is a resident of the
State of Kentucky, and now is and has been for some time past, manager of the firm of A. Culp, Coal Dealer, in the State of Kentucky and that the said Coal firm of A. Culp shipped over the Louisville and Nashville Railroad three cars of cinders for the Central Stock Yards Company, at Central Stock Yards, Kentucky, and that the said Louisville and Nashville Railroad Company did receive said three cars of cinders and switch said three cars of cinders to the Southern Railway for delivery to the Central Stock Yards at Central Stock Yards, Kentucky.

CHAS. LEFFERT.

Subscribed and sworn to before me by Chas. Leffert this 11th day of November, 1901.

[SEAL.]

H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

My commission expires March 22nd, 1904.

116 Affidavit of John M. Settle filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, John M. Settle, states that he is a resident of the State of Kentucky, and that he is Secretary and Treasurer of the Ohio River Sand Company and that said Sand Company has shipped twenty or more cars or sand over the Louisville and Nashville Railroad to be delivered to the Southern Railway Company for the Central Stock Yards Company, at Central Stock Yards, Kentucky, and that the said Louisville and Nashville Railroad Company did receive and deliver said twenty or more cars of sand to said Southern
117 Railway Company for the Central Stock Yards Company at Central Stock Yards Kentucky.

JOHN M. SETTLE.

Subscribed and sworn to before me by John M. Settle this 11th day of November, 1901.

[SEAL.]

H. V. DAVIS,
Notary Public, Jeff. Co., Ky.

My commission expires March 22nd, 1904.

Affidavit of Henry Just filed on the 12th day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

—— ——
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affiant, Henry Just, who is a member of the firm of L.
118 Just and Co., carpenter contractors, resident of the State of Kentucky, and has been for some time past engaged in said contracting business, states that on several occasions he has ordered oak posts for the buildings at the Central Stock Yards, at Central

Stock Yards, Ky. from Kirwin Bros. manufactory and wholesale lumber dealers, doing business in the State of Kentucky and that they have shipped him a great many cars over the Louisville and Nashville Railroad, and that said Louisville and Nashville Railroad turned said cars over to the Southern Railway Company to be delivered to said stock yards for L. Just & Co. which said Southern Railway did.

HENRY JUST.

Subscribed and sworn to before me by Henry Just this 11th day of November, 1901.

[SEAL.]

H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

My commission expires March 22nd, 1904.

119 Affidavit of J. B. Ohligschlager filed on the 12th day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, J. B. Ohligschlager, President of the National Roofing and Supply Company states that he is a resident of State of Kentucky, and now is and for some time past engaged in said business, and at divers times he has tendered Louisville and Nashville Railroad and they have accepted ten or more car loads of material to be used for roofing buildings at the Central Stock Yards, at Central Stock Yards Kentucky, and that the Louisville and Nashville Railroad Company turned over to the Southern Railway said cars, and the said
120 Southern Railway Company did switch and place said cars on switch at said Central Stock Yards at Central Stock Yards Kentucky.

J. B. OHLIGSCHLAGER.

Subscribed and sworn to before me by J. B. Ohligschlager this 11th day of November, 1901.

[SEAL.]

H. V. DAVIS,
Notary Public, Jeff. Co., Ky.

My commission expires March 22nd, 1904.

Affidavit of Robert Hegan filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

121 Affiant, Robert Hegan, a member of the plumbing firm of Roser and Hegan, doing business in the State of Kentucky and a resident thereof, and for some time past engaged in said business, states that in the month of September, in the year 1901 he ordered through the Ahren and Ott Manufacturing Co. one car of pipe, to be used by him in equipping the plumbing at the Central Stock Yard at Central Stock Yards, Kentucky, and that said pipe was ordered by said Ahrens and Ott Manufacturing Company from the Dimmick Pipe Co. of Birmingham, Ala., and that said pipe was shipped in an L. & N. car 26034 and turned over to the Southern Railway Company, who switched it to said Central Stock Yards, at Central Stock Yards, Kentucky, on September 25th, 1901 at 3 o'clock, P. M.

ROBERT HEGAN.

Subscribed and sworn to before me by Robert Hegan this 11th day of November, 1901.

[SEAL.]

H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

My commission expires March 22nd, 1904.

122 Affidavit of W. M. Hicks filed on the 12th day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, W. M. Hicks, states that he is a resident of the State of Kentucky, and is now and has been for at least ten years in the employ of stock yards companies, and has a thorough knowledge of receiving, delivering and caring for live stock consigned to stock yards, and after a thorough examination he finds that the Central Stock Yards at Central Stock Yards, Kentucky are fully equipped to handle and care for all stock consigned to said yards, and he further
123 states that said Central Stock Yards are the best arranged yards he has ever seen.

W. M. HIX.

Subscribed and sworn to before me by W. M. Hix this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

My commission expires March 22nd, 1904.

Affidavit of J. E. Miller filed on the 12th day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, J. E. Miller, a member of the firm of Stewart San-
124 ders Miller and Co. doing a commission business at the Central Stock Yards, at Central Stock Yards, Kentucky, and a resident of the State of Kentucky, is now and has been for some time past engaged in live stock business, and states that Central Stock Yards Company, at Central Stock Yards, Kentucky have a modern yards for lotting, receiving and shipping all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that he has seen in other yards in Kentucky, and they have ample commission firms and buyers to handle any and all stock consigned to Central Stock Yards, at Central Stock Yards, Kentucky, and that the said firm of Stewart Sanders Miller & Co. have had numerous loads of live stock consigned to them over the L. & N. Railroad and that said Louisville & Nashville Railroad Company has refused to bill or deliver any stock consigned to Central Stock Yards Company, at Central Stock Yards, Kentucky.

J. E. MILLER.

Subscribed and sworn to before me by J. E. Miller this 11th
125 day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

Affidavit of J. T. Stewart, filed on the 12 day of November, 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, J. T. Stewart, a member of the firm of Stewart Sanders Miller & Co., doing a commission business at the Central Stock Yards, at Central Stock Yards, Kentucky, and a resident of
126 the State of Kentucky, is now and has been for some time past engaged in the live stock business, and states that Central Stock Yards Company, at Central Stock Yards, Kentucky, have a modern yard for lotting and unloading. Chutes are modern and far superior to some chutes that he has seen in other yards in Kentucky, and they have ample commission firms and buyers to handle any and all stock consigned to Central Stock Yards, at Central Stock Yards Kentucky and that the said firm of Stewart Sanders Miller & Co. have had numerous loads of live stock consigned to them over the L. & N. Railroad, and that said Louisville and Nashville Railroad Company has refused to bill or deliver any stock consigned to Central Stock Yards Company, at Central Stock Yards Kentucky.

J. T. STEWART.

Subscribed and sworn to before me by J. T. Stewart this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

127 Affidavit of A. Sanders filed on the 12 day of November 1904, is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, A. Sanders, a member of the firm of Stewart Sanders Miller & Co. doing a commission business at the Central Stock Yards, at Central Stock Yards Kentucky, and a resident of the State of Kentucky is now and has been for some time past engaged in the live stock business, and states that Central Stock Yards Company, at Central Stock Yards Kentucky, have a modern yards for lotting, receiving and shipping all kinds of live stock; that their loading and

unloading chutes are modern and far superior to some chutes
128 that he has seen in other yards in Kentucky, and they have ample commission firms and buyers to handle any and all stock consigned to Central Stock Yards at Central Stock Yards Kentucky, and that the said firm of Stewart Sanders Miller & Co. have had numerous loads of live stock consigned to them over the L. & N. Railroad, and that said Louisville & Nashville Railroad Company has refused to bill or deliver any stock consigned to Central Stock Yards Company, at Central Stock Yards Kentucky.

A. SANDERS.

Subscribed and sworn to before me by A. Sanders this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Kentucky.

My commission expires Mar. 22, 1904.

Affidavit of J. Hart filed on the 12th day of November
129 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, J. L. Hart, a member of the firm of Hart, McCampbell & Co., doing a commission business at Central Stock Yards, at Central Stock Yards, Kentucky, states that he is a resident of the State of Kentucky, and is now and has been for some time past engaged in the livestock business, and also states that Central Stock Yards Company, at Central Stock Yards, Kentucky, have a modern Yards for lotting, receiving all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that
he has seen in other yards in Kentucky and that they have
130 ample commission firms and buyers to handle any and all stock consigned to Central Stock Yards, at Central Stock Yards Kentucky.

J. L. HART.

Subscribed and sworn to before me by J. L. Hart this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

Affidavit of John McCampbell filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

131 Affiant, John McCampbell, a member of the firm of Hart, McCampbell & Co., doing a commission business at Central Stock Yards, at Central Stock Yards Kentucky, and a resident of the State of Kentucky, is now and has been for some time past engaged in the live stock business, and states that Central Stock Yards Company, at Central Stock Yards Kentucky, have a modern yards for lotting, receiving and shipping all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that he has seen in other yards in Kentucky, and they have ample Commission firms and buyers to handle any and all stock consigned to Central Stock Yards, at Central Stock Yards Kentucky.

J. W. McCAMPBELL.

Subscribed and sworn to before me by J. W. McCampbell this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

132 Affidavit of L. W. Burton filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, L. W. Burton, a member of the firm — W. R. Crawford & Co., doing a commission business at the Central Stock Yards, at Central Stock Yards, Kentucky, states that he is a resident of the State of Kentucky and is now and has been for some time past engaged in the live stock business, and also states that Central Stock Yards Company, at Central Stock Yards, Kentucky, have a modern yard for lotting, receiving and shipping all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that he has seen in other Yards in Kentucky,
133 and that they have ample Commission firms and buyers to handle any and all stock consigned to Central Stock Yards, at Central Stock Yards Kentucky.

L. W. BURTON.

Subscribed and sworn to before me by L. W. Burton this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

Affidavit of W. J. Byrne filed on the 12th day of November 1901 is as follows:

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

134 Affiant, W. J. Byrne, a member of the firm of M. Byrne & Co. doing a commission business at Central Stock Yards, at Central Stock Yards Kentucky, states that he is a resident of the State of Kentucky, and is now and has been for some time past engaged in the live stock business, and also states that Central Stock Yards Company, at Central Stock Yards, Kentucky, have a modern yards for lotting, receiving and shipping all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that he has seen in other yards in Kentucky, and that they have ample commission firms and buyers to handle any and all stock consigned to Central Stock Yards at Central Stock Yards Kentucky.

WM. J. BYRNE.

Subscribed and sworn to before me by Wm. J. Byrne this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

135 Affidavit of James E. Wheeler filed on the 12th day of November 1901 is as follows:

Jefferson Circuit Court, —— Division.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit.

Affiant, Jas. E. Wheeler, a member of the firm of Wheeler & Gibson, doing a Purchasing business at the Central Stock Yards, at Central Stock Yards Kentucky, states that he is a resident of the State of Kentucky, and is now and has been for some time past en-

gaged in the live stock business, and also states that Central Stock Yards Company, at Central Stock Yards, Kentucky, have a modern yards for lotting, receiving and shipping all kinds of live stock; that their loading and unloading chutes are modern and far superior to some chutes that he has seen in other yards in Kentucky, and
136 that they have ample Commission firms and buyers to handle any and all stock consigned to Central Stock Yards at Central Stock Yards, Kentucky.

J. E. WHEELER.

Subscribed and sworn to before me by J. E. Wheeler this 11th day of November, 1901.

[SEAL.] H. V. DAVIS,
Notary Public, Jefferson County, Ky.

My commission expires Mar. 22, 1904.

At a Court held on the 14th day of November, 1901:

By agreement of parties by counsel, ordered that this action be and is postponed until the 16th inst.

137 At a Court held on the 16th day of November, 1901:

Came plaintiff by counsel and filed herein the affidavits of B. H. Hurt, W. A. Evans and R. M. Wather.

Came plaintiff by counsel and filed herein affidavit of M. H. Smith, and copy of agreement, as an exhibit with said affidavit, also affidavit of J. P. Whiskeman, and map as an exhibit, also affidavit of G. A. Birch, also affidavit of J. F. Coady, also affidavit of G. W. Embry and others.. Came parties by counsel.

And this action having been heard on the motion for injunction, ordered that said action be and is submitted on said motion.

Said affidavits filed herein on the 16th day of November, 1901, are as follows, to-wit:

138 Jefferson Circuit Court, Chancery Division.

#30269.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

B. H. Hurt being duly sworn says that he is the President of the Central Stock Yards Company, and that he has carefully read the affidavit of Milton H. Smith, President of the Louisville and Nashville Railroad Company, and that the statement therein that before the erection of any of the structures of the Central Stock Yards Company he (Hurt) came to the said Smith, as President of the Louisville and Nashville Railroad Company, and also went to the

General Manager of the said Louisville and Nashville Railroad Company and asked if arrangements could be made for the receipt and delivery by the Louisville and Nashville Railroad Company
139 of livestock at Stock Yards to be erected where the present stock yards of the Central Stock Yards are located, and the said Smith at said time, and before any of the work or buildings of said Company had been erected, advised him, the said Hurt, that the Louisville and Nashville Railroad Company would not and could not receive or deliver livestock at said Central Stock Yards' plant or at any other place than at its regular livestock depot at Bourbon Stock Yards, is a mistake, and not true in fact; that he did call upon said Milton H. Smith, as President of the Louisville and Nashville Railroad Company and the General Manager of the said Louisville and Nashville Railroad Company and asked them whether or not they would at the point of intersection of the lines of the Louisville and Nashville Railroad Company with those of the Southern Railway Company in Kentucky near the premises of the Central Stock Yards Company to be constructed, build a switch connecting the said Louisville and Nashville Railroad Company with the tracks of the said Southern Railway Company, and that
140 the said Smith, as President of the Louisville and Nashville Railroad Company, and the General Manager of the said Company, advised him that the said Louisville and Nashville Railroad Company would not construct such switch for delivery at that point; but there was nothing then said as to whether or not the Louisville and Nashville Railroad Company would receive, transport, switch or deliver live stock to the Southern Railway Company or any connecting carrier for delivery by said Southern Railway Company or such connecting carrier to the plant to be constructed by the said Central Stock Yards Company. He files herewith as a part hereof the letter received from the General Manager of the L. & N. R. R. Co. showing the nature of his request of said Railroad and its action thereon.

He says that it is not true, as stated in the affidavit of the said Milton H. Smith that a part of the plant of the said Central Stock Yards Company is within the limits of the City of Louisville.
141 He says that on December 14th, 1891, John Cudahy purchased from the Louisville & Nashville Railroad Company certain tracts or parcels of land, as per deed recorded in Deed Book 389 page 324 in the Office of the County Clerk of Jefferson County, Kentucky, and in part consideration therefor the said John Cudahy was to and did dedicate for street purposes a strip of ground 30 feet wide, or the eastern one half of Floyd Street, if extended, from the right of way line of the old Louisville Southern Railroad, now Southern Railway Company in Kentucky, to the southern boundary of the land conveyed by said deed and that afterwards on the 10th day of June, 1892, the said John Cudahy, without being joined by his wife conveyed to the Louisville Terminal Railway Company a right of way 30 feet in width over and along the land so purchased by said John Cudahy, beginning at a point where the line of the said John Cudahy in aforesaid deed intersects Floyd Street if ex-

tended, and running thence eastwardly along the land of the
142 said John Cudahy so purchased from the Louisville and Nashville Railroad Company and along the Louisville Southern Railroad, now the Southern Railway Company in Kentucky, to the eastern line of the said track, which said conveyance was never by the said John Cudahy acknowledged or recorded, or the instrument conveying, or attempting to convey said right of way signed by the wife of the said John Cudahy and afterwards on December 8th, 1900, as per deed recorded in Deed Book 544 page 264, the said John Cudahy and wife conveyed all of said land, disregarding the said conveyance to the said Louisville Terminal Railway Company; to said B. H. Hurt, and that afterwards the said B. H. Hurt on the *20th* day of *May, 1901,* as per deed recorded in Deed Book *555,* page *407,* conveyed to the said Central Stock Yards Company of the said tract of land so purchased from the said John Cudahy, and by the said John Cudahy purchased from the Louisville and Nashville Railroad Company certain portions or parcels of the said land, and that no part of the said land so purchased by the said Central Stock Yards Company from the said B. H.
143 Hurt is within the said City of Louisville, but that on the 14th day of September, 1901, there was conveyed to the said Central Stock Yards Company, the right, title, claim and interest by said B. H. Hurt in and to the strip of land 30 feet in width in the use and occupancy of the Louisville Terminal Railway Company under aforesaid unrecorded conveyance of the said John Cudahy to said Louisville Terminal Railway Company.

Affiant further says that he was one of the promoters of the Central Stock Yards Company, but that it is not true that he was the chief promoter; but as a matter of fact he took up the matter of the advisability of the construction and putting in operation of another stock yards for the receipt, caring for, handling and sale of live stock of every character raised and produced within the State of Kentucky, and states tributory thereto, but he canvassed the matter with live stock dealers, raisers and packing establishments throughout the United States and found that the delivery of live
144 stock for market in Louisville over any other railway entering the City of Louisville than the Louisville and Nashville Railroad was to a certain extent at the mercy of the Louisville and Nashville Railroad Company in the matter of making delivery at the Bourbon Stock Yards, and that such yards were only reached by use of the lines or track of the said Louisville and Nashville Railroad Company; and he further ascertained and found, in connection with his associates, that at some point in or near the City of Louisville a stock yard could be erected more accessible to all of the road entering the City of Louisville than the Bourbon Stock Yards, and afterwards effected arrangements before the construction of the said plant, with the Southern Railway Company in Kentucky for delivery, at such plant so to be erected, of all live stock so consigned without discrimination, and whether the same originated on the said Southern Railway Company in Kentucky or any other line of Rail-

way in or out of Kentucky entering the City of Louisville;
145 and that the property upon which the Central Stock Yards Company's plant was and is erected was the most available property to be purchased for such purpose and near the break up yards of the Louisville and Nashville Railroad Company in South Louisville; and that he and his said Associated were advised that under the laws of the State of Kentucky all enterprises and particularly the Central Stock Yards Company would have to be treated by all railway Companies upon an equal basis with like plants or companies, and that under the said laws governing common carriers the raisers, dealers, and handlers of live stock in Kentucky and the States tributory thereto believing that deliveries could be made at said Central Stock Yards, and further believing that by the construction of a modern and well equipped plant, as has been constructed by the Central Stock Yards Company, the livestock business in Kentucky and market for the same could be greatly increased and the interest of the raisers and dealers and handlers of live stock greatly promoted by such company the said parties in in-
146 terest invested a very large sum of money necessary to the construction and erection of said Central Stock Yards and that in asking for deliveries at said Central Stock Yards Company it is not claimed or insisted that any railway company shall make any delivery thereat if otherwise requested or directed by the raiser, dealer or handler of such live stock so placed upon the market in Kentucky, and that the whole effort of the said Central Stock Yards Company by this suit is to be put on equality with other enterprises of like character without any favoritism shown to it, or discrimination against it.

He further says that he has carefully examined into the facilities of the Louisville and Nashville Railroad Company for making delivery of live stock consigned to the Southern Railway Company in Kentucky for delivery at said Central Stock Yards, and that in as much as the said break up yards of the Louisville and Nashville Railroad Company is within a few hundred yards of the
147 plant of the Central Stock Yards Company he has been informed, and knows that live stock can be more speedily delivered to the said Central Stock Yards, either by the Louisville and Nashville Railroad Company from its break up yards, or the Southern Railway Company, and especially from all other Railway Companies entering the City of Louisville than delivery thereof can be had or made at the said Bourbon Stock Yards but that it has not been the purpose of his said yards to ask any discrimination against or favoritism to its said yards on the part of any railroad company entering the City of Louisville.

B. H. HURT.

Subscribed and sworn to before me by B. H. Hurt, this 15th day of November, 1901.

My commission expires the 12th day of January, 1904.

CHAS. JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

148 DECEMBER 18TH, 1900.

Mr. B. H. Hurt, #102 West Main Street, Louisville, Ky.

DEAR SIR: Please refer to conversation in this office relative to the construction of a siding in connection with tracks of this Company across certain property owned by you near our South Louisville Yards.

I wish to advise that the Louisville and Nashville Railroad Company must decline to construct the siding in question.

I return the blue print map you left with me.

Yours truly,

G. E. EVANS,
General Manager.

Jefferson Circuit Court, Chancery Division.

149 No. 30269.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

W. A. Evans being duly sworn says that he was in the service of the Bourbon Stock Yards in Louisville, Kentucky, about 22 years and occupied different positions during such service, including that of Yard Master, and he further says that no livestock coming to Louisville to the Louisville market could or can get to the said Bourbon Stock Yords other than over the tracks and line of Railway of the Louisville and Nashville Railroad Company, and that during his service there was much complaint of the delay on the part of shippers in having deliveries made of their stock at said Bourbon Stock Yards; that he has examined the plant and equipment of the Central Stock Yards and believes the facilities for loading and unloading livestock with safety and promptness pos-
150 sessed by the said Central Stock Yards are of the most modern character, and equal to those possessed by any stockyards within his knowledge.

He further knows personally R. M. Wathen, weigher at the Central Stock Yards, Andrew Graves, E. Brewer, Harry O'Brien, David Crady, Sam Moore, F. Dupen and William M. Hicks, all of whom are in the employ of the Central Stock Yards, and that the said last seven named are skilled workmen in the performance of the services necessary to the speedy and safe loading and unloading, giving attention to, caring for and handling live stock from having served with them and observed their skill and ability in said line, and considers said corps of workmen so employed at Central Stock Yards to render such service of the best to be had.

He further says that he knows the location of the break up yards of the Louisville and Nashville Railroad Company in South Louis-

ville, and the position of the said yards with respect to the
151 location of the Central Yards' plant, and that the said Central Stock Yards' plant is only a few hundred yards eastwardly of said break up yards, and much nearer than the plant of the Bourbon Stock Yards Company and that of the livestock coming to the Louisville market over the Louisville and Nashville Railroad he believes that about 80 or 85 per cent. comes from the South and is broken up in the yards of the Louisville and Nashville Railroad Company in South Louisville, and that it handled in making delivery thereof at the said Central Stock Yards Company as said stock is handled for the Bourbon Stock Yards by the said Louisville and Nashville Railroad Company a distance in transportation of about five miles would be saved in making delivery at the said Central Stock Yards.

Affiant further says that he is not now in the employ of the Bourbon Stock Yards, or any stock yards, but has been Assistant Postmaster for a period of two years and eleven months, and still occupies that same position.

W. A. EVANS.

152 Subscribed and sworn to, before me, by W. A. Evans, this 15th day of November, 1901.

My commission expires the 12th day of January, 1904.

CHARLES JOHANBOCKE,
Notary Public, Jefferson County, Kentucky.

153 Jefferson Circuit Court, Chancery Division.

#30269.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit.

R. M. Wathen being duly sworn says that he is a livestock weigher at the Central Stock Yards Company, Central Stock Yards Kentucky and that for 17 years he occupied the same position as livestock weigher at the Bourbon Stock Yard in Louisville, Kentucky, and that he personally knows that no livestock coming to the Louisville market could or can get to the said Bourbon Stock Yards other than over the tracks and line of railway of the Louisville and Nashville Railroad Company, and that all stock coming to the Louisville market from the Northern Railroad entering Louisville and all other railroads than the Louisville and Nashville Railroad has been necessarily switched at or near South Louisville, or in the Southern portion of the City of Louisville, and much delay in having delivery
154 made at said Bourbon Stock Yards, and that the Central Stock Yards' plant is within a few hundred yards of the break up yards of the Louisville and Nashville Railroad Company, and that

said Central Stock Yards, with the facilities possessed in the service of the Southern Railway Company in Kentucky, at Louisville, is capable of making deliveries of livestock coming in over any railroad to the Louisville market more quickly to the Central Stock Yards than to the Bourbon Stock Yards, and that his position as aforesaid, has been such as to enable him to personally know of the extensive complaint on the part of the shippers to the Louisville market because of the delay and damage to their stock occasioned in the switching from South Louisville and delay in making prompt delivery at the Bourbon Stock Yards.

He personally knows that the said Central Stock Yards has at its plant and keeps on hand a sufficient number of skilled workmen in the performance of the services necessary to the safe and
155 speedy loading and unloading, and the best facilities for feeding, handling and caring for livestock at said yards, and that many of the said skilled workmen so in the employ of the Central Stock Yards to render such service, rendered like service for many years at the Bourbon Stock Yards, and are, therefore, experienced in the business, and that the facilities both as to equipment and skill of workmen or laborers to perform the service necessary in loading and unloading feeding, handling and caring for livestock at Central Stock Yards are superior to that possessed by any other stock yards in Kentucky, and equal to the equipment and facilities at any stock yards out of Kentucky.

R. M. WATHEN.

Subscribed and sworn to, before me, by R. M. Wathen, this 15th day of November, 1901.

My commission expires the 12th day of Jan'y, 1904.

CHARLES JOHANBOCKE,
Notary Public, Jefferson County, Kentucky.

156 STATE OF KENTUCKY, *County of Jefferson:*

Milton H. Smith being duly sworn says:

I am the President of the Louisville & Nashville Railroad Company and have been such for many years.

At a place, such as the City of Louisville it is absolutely essential to the proper management and handling of business that a Railroad Company handling a large amount of live stock, either bringing it to the Louisville market or taking it from that market should have a regular live stock depot provided with facilities for handling and taking care of that peculiar species of property. Live stock need peculiar attention. They have to be fed and watered at regular intervals to keep them from suffering and to preserve them in good condition. They are liable when large numbers of them are placed in cars as is a necessity, to get down and be trampled upon, a liability which of course increases the longer they stay confined in one car or other place. Moreover certain kinds of live stock such as
157 sheep and hogs suffer very greatly from extreme heat or extreme cold. In very hot weather it is of the greatest import-

ance in handling such stock to unload them from cars as quickly as possible and throw water upon them, in order to reduce their bodily heat. The longer they stay in cars in which they have been transported, the more liable do they become to injury from any of the causes above mentioned. On the other hand as to most dead freight, to-wit, all except certain kind of perishable property, it can stand loaded in cars without material injury, and furthermore is not affected by the moving and shifting of cars, although animals are.

Facts and considerations such as the foregoing are what make it necessary that there should be the difference to which I have already referred, between the manner of handling dead freight and the manner of handling live stock. And they make it essential that a Railroad Company handling a large amount of live stock into or out of a particular market such as Louisville should have a
158 regular live stock depot, where prompt attention can be given to such live stock by men who are skilled in the handling of this character of property.

Many years ago, to wit, in 1880 which was at least 20 years before the establishment of the stock yards of the Central Stock Yards Company, the Louisville & Nashville Railroad Company entered into a written agreement with the Bourbon Stock Yards Company of the City of Louisville for a period of ten years from that date, which contract was afterwards superseded by written contract between the said parties which took effect on August 1st, 1888 and continued by its terms for ten years from that date and which last mentioned contract was afterwards extended by agreement in writing between the said parties for the term of ten years from September 20th, 1898.

A copy of said written contract of 1888 and of the extension thereof is annexed to and made part of this affidavit.

The substance and effect of the said written contract was
159 and is that the Louisville and Nashville Railroad Company establish a live stock depot for the Louisville market at the Bourbon Stock Yards in Louisville, Kentucky, which yards were contiguous to the lines of the Louisville and Nashville Railroad Company, and agreed that it would not establish or in any manner facilitate the establishment of any other Stock Yard or Stock depot in said city, and that it would deliver and cause to be delivered at the Bourbon Stock Yards, so far as it legally might do so, all live stock shipped over its roads and consigned to the City of Louisville. And on the other hand by said contract the Bourbon Stock Yards Company agreed that it would maintain and keep its stock yards in good condition with sufficient and ample facilities for the handling of all live stock which should come to such yards, with proper conveniences for doing such business, such as are usual and customary in the best conducted Stock Yards in this country, and that it would always keep on hands at such yards a sufficient number of
160 skilled workmen to perform this class of service and generally to do such work and labor as is usually provided in stock yards of the best class; and that it would load and unload all live

stock that might be brought to said yards, for which services the Louisville & Nashville Railroad Company agreed to pay said Stock Yards Company fifty cents per car. And the said Stock Yards Company further agreed, that all charges which it might make for keeping, feeding or caring for live stock coming to its yards under that contract either directly or indirectly should be reasonable, and that it would not charge any more for keeping, feeding and caring for the live stock of its patrons that is charged for similar services or supplies by other stock Yards in said City. In other words, said Bourbon Stock Yards Company by said contract not only agreed to load and unload live stock and to place the same in the delivery pen when unloaded, for a certain rate to be paid by the Louisville & Nashville Railroad Company but further agreed for the benefit of the public generally that the charges which it should make for
161 keeping live stock after delivery, and for caring for the same and feeding the same if the owners should choose to leave their live stock at the Bourbon Stock Yards, should be reasonable.

Since the making of the original contract of 1880 between the Bourbon Stock Yards Company it has, as I believe, been faithfully kept by both parties thereto, according to both the letter and the spirit of the said contract. The Bourbon Stock Yards Company has provided at the said Stock Yards ample facilities for the handling of all live stock which comes to the Louisville market, and has also provided and maintained there an ample force of men skilled in the handling of such property, and has carefully and efficiently handled the said live stock; and the Louisville & Nashville Railroad Company on its part has always insisted and demanded that all deliveries of live stock by it or to it for the Louisville market should be at its live stock depot at the Bourbon Stock Yards. For the loading and unloading of such live stock no charge whatever is or has ever
162 been made against the owners of such stock. While the Louisville and Nashville Railroad Company pays the Bourbon Stock Yard Company for performing this service, yet this is not a charge against the owners of the stock.

It is true that after stock is delivered at the Bourbon Stock Yards, the owner has the privilege if he chooses, to order the Bourbon Stock Yards Company to retain said stock for him, and to feed and care for it until he can sell it or until he desires to take it away to some other point; but this is a matter entirely optional with the owner. He can leave it at these yards or take it away as he pleases. And the Louisville and Nashville Railroad Company in making the contract just mentioned took pains to secure an agreement on the part of the Bourbon Stock Yards Company as I have heretofore pointed out, that its charges for caring for such stock as might be left with it should be reasonable and that its attention thereto should be proper.

When live stock is delivered at said live stock depot at the
163 Bourbon Stock Yards, it is, without any charge to the owner unloaded and held for the owner for a reasonable time to enable him to get the stock and either take it away or arrange for its further care and maintenance.

The Louisville and Nashville Railroad Company and the said

Bourbon Stock Yards Company believed at the time the said original contract and subsequent contracts were made, as aforesaid that they were lawful and valid contracts, and to the mutual advantage of the two contracting parties, and that prompt, efficient and satisfactory service of the public dealing in live stock would be secured by the carrying out of the terms of said contracts. And on the faith of said contracts both parties thereto, to wit, the Louisville and Nashville Railroad Company and the Bourbon Stock Yards Company have expended large amounts of money. The Louisville & Nashville Railroad Company has arranged its tracts and many side tracks so as to facilitate in every possible way the prompt delivery of live stock at the said Bourbon Stock Yards; and the Bourbon Stock Yards
164 Company has erected at great cost ample facilities for the handling at one time of large amounts of live stock, and for giving them that peculiar attention which their nature requires; and has provided not only pens and other facilities for ordinary live — in healthy condition, but has provided entirely separate pens known as "quarentine pens" for live stock coming from those districts which are required by the laws of the United States to be kept separate from live stock, coming from other districts; all of which has cost large sums of money.

Before the erection of any of the structures of the Central Stock Yards Company Mr. B. H. Hurt who is the President of that Company and was its chief promoter came to me as the president of the Louisville & Nashville Railroad Company, and also went to the General Manager of the Company, and asked if arrangements could be made for the receipt and delivery by the Louisville & Nashville Railroad Company of live stock at Stock Yards to be located
165 where the present stock yards of the Central Stock Yards Company are located. And I told him at that time, before any of the works or buildings of said Company had been erected, that the Louisville and Nashville Company would not and could not receive or deliver live stock at that place, or at any other place than its regular live Stock depot at the Bourbon Stock Yards, because it had entered into a contract with the Bourbon Stock Yard Company, which was still in effect, and which I believe to be valid as well as a just contract, and that under that contract the Louisville & Nashville Railroad Company could not and would not receive or deliver live stock at any other place. I do not know whether at the date of that conversation the corporation known as the Central Stock Yards Company had been legally created or not, but the conversation which I have mentioned was, as I have said, with Mr. B. H. Hurt, who was the principal promoter of that corporation and is now its
166 President, and he and the Central Stock Yards Company knew before the said Stock Yards or any part thereof were erected, just what the position of the Louisville and Nashville Railroad Company would be and now is, and its reason for taking such position.

The said Hurt, on the occasion of the conversation mentioned, said that the Stock Yards referred to by him would not be within the limits of the City of Louisville. But I said to him that they were for

all practical purposes in the City of Louisville and were certainly intended as a Stock Yard for the Louisville market. And it is a fact that a part of the property of said Stock Yards Company is within the limits of the City of Louisville, and part without such limits. In other words, the boundary line of the City of Louisville runs through the property of said Central Stock Yards Company. And I felt then and now feel, and stated to Mr. Hurt that stock Yards thus located were as much within the meaning of the contract between the Louisville and Nashville Railroad Company and the Bourbon Stock
167 Yards Company as if they were entirely within the City limits.

It would greatly disarrange the business of the Louisville and Nashville Railroad Company and be very burdensome to it to be compelled to handle live stock for the Louisville market in the manner in which an effort is now being made to compel it to do, to wit, by delivering live stock to the Southern Railway Company to be carried to the Central Stock Yards. And furthermore would subject the live stock to such great risk of injury that they are subjected in the Louisville and Nashville Railroad Company's present course of handling same. As the said live stock business is now handled and has long been handled by the Louisville and Nashville Railroad Company, when live stock comes in on its road from the South it first reaches South Louisville a station on the main line of the L. & N. R. Co. in the extreme Southern portion of the City. At this place the L. & N. R. Co. has very extensive freight yards with many side tracks. Here the regular road engine which has brought the
168 train in from the South is disconnected from the train, and thereafter the cars composing said train are handled by a switch engine. If there are cars containing live stock in the train, they are put to themselves and taken by a switch engine as promptly as possible from South Louisville around by the way of a track formerly known as the Louisville Railway Transfer track, from South Louisville to the Bourbon Stock Yards which are in close proximity to East Louisville, and there at said Stock Yards they are unloaded.. The great bulk of the live stock brought into the City is brought in on Saturday night and Sunday because Monday is the Chief Market day for cattle. And as to live stock thus brought in the effort is made to keep the cars of live stock as nearly as possible to themselves, separated from dead freight, so that frequently on Saturday night and Sunday trains come in which are composed mostly of live stock cars all of which are to themselves and which can be taken therefore with very little handling straight from the yards at South Louisville to the Bourbon Stock Yards. And so as to trains
169 that come in on other days than Saturday and Sunday the effort is always made to keep the live stock cars as nearly together as possible so that they can be promptly separated from the others and taken to the Stock Yards with very little shifting.

But if the Company should be compelled to deliver part of its live stock to the Bourbon Stock Yards, and part of it to the Central Stock Yard by means of the Southern Railway, the result would be that whenever a train reached the yards at South Louisville there would

not only have to be the separation of live stock cars from the dead freight cars but there would have to be a further breaking up and separation of the live stock cars destined for the Bourbon Stock Yards from those destined to the Central Stock Yards which would require just that much additional moving of the cars in shifting them about and getting all those destined for the Bourbon Stock Yards together and all those destined for the Central Stock Yards together.

Then when they had been thus separated, one switch
170 engine would have to take those destined for the Bourbon Stock Yards around by the Louisville Railway Transfer track heretofore mentioned while another switch engine with another switching crew would have to take those destined for the Central Stock Yard and carry them up the main tracks of the Louisville and Nashville Railroad Company northwardly in the direction of its passenger station at Tenth and Broadway, until they could reach a point of physical connection between these main tracks of the L. & N. R. Co. and the tracks of the Southern Railway.

While there is a physical connection between the track- of the L. & N. R. Co. and those of the Southern Railway Company at a crossing at Fourth and G Streets in the City of Louisville, yet this is a place and a character of crossing where it would not only be impracticable but dangerous to make a regular place of interchanging of livestock cars between said two Railroad Companies, if such interchange should be a matter of frequent occurrence. This
171 is a point where the main tracks of the L. & N. R. Co. and the main tracks of the Southern Railway Company and the tracks of the Louisville Railway Company (an electric St. car line) all cross each other. And but a few feet east of this point of crossing is a public street paved with asphalt, whereas just a few feet west of this point of crossing is a passenger station on the line of the Southern Railway at which many passengers get on and off the passenger cars of the Southern Railway. Thus passengers get off of such cars come immdeiately across the said point of intersection of said tracks to a point where they can take the cars of the Louisville Railway Company to be brought into the City; while, on the other hand, persons intending to leave the city from said passenger station go out on the Fourth street cars of the Louisville Railway to the said point of crossing, and there alight, walk over the crossing to the aforesaid passenger station of the Southern Railway, and there take its cars. Furthermore there are no side tracks at the said crossing or intersection upon which cars can be set off
172 by the L. & N. R. Co. to await *there* being taken up by the Southern Railway Company, or *vice versa*. And if an attempt should be made to exchange cars at that point it would be necessary to leave these cars either on the main tracks of the L. & N. Co., over which its regular passenger train- travel, or on the main track, which is a single track, of the Southern Railway Company over which its passenger train- regularly pass.

It would therefore be impracticable, as well as dangerous, for the reasons heretofore mentioned, to attempt to make said Fourth and

G Street crossing a regular place of interchange of live stock cars between said two railroad companies.

The only other point of physical connection which has been alleged to exist between the tracks of the L. & N. R. Co. and those of the Southern Railway Company is at the point where the main tracks *where* the L. & N. R. Co. cross Magnolia Avenue near
173 Seventh Street which is a point on the main tracks of the L. & N. R. Co. between South Louisville and the company's passenger depot at Tenth and Broadway, said alleged point of intersection being about two miles north of South Louisville and about one mile South of the passenger station at Tenth and Broadway. At this point, to wit, at Magnolia Avenue, there is a connection between the main tracks of the L. & N. R. Co. and a track of some other company which I have understood is a track of the Kentucky and Indiana Bridge and Railway Company. The connection with the tracks of the L. & N. R. Co. at this place is such that the connecting track can only be entered by the L. & N. R. Co.'s engines and cars coming from a Southernly direction, so that if a switch engine having picked up cars at South Louisville should pull them northwardly to this point of connection at Seventh and Magnolia and entered upon the said connecting tracks there would be no way for the engine to get back on the L. & N. R. Co.'s tracks. Thus the only manner in which cars can be delivered on those con-
174 necting tracks at Seventh and Magnolia is for a switch engine at South Louisville to get behind the cars and push them ahead of it into this connection at Seventh and Magnolia, and then back out itself to the tracks of the L. & N. R. Co. all of which requires just that much additional movement and time by the switch engine and crew.

The foregoing is a statement of how it would be physically possible to make a delivery of live stock on the Kentucky and Indiana Bridge Co. track, as I understand it is at Seventh and Magnolia. But as a matter of fact when deliveries are made from the L. & N. R. Co. on that track the cars to be delivered are first taken from the freight yards at South Louisville northwardly to the yards between Oak and Kentucky Streets by an Engine which is called a "transfer engine" and does no business except the transferring of cars between said two yards, and whose time is entirely occupied by the doing of this through transfer business. Then when such cars have been landed by the transfer engine in the yards between Oak and Kentucky Streets they are then taken by switch engine and dis-
175 tributed to whatever points they should properly go, so that if they are destined to go to this track on Magnolia Avenue, they are carried back to Magnolia Avenue by this switch engine and there delivered.

The transfer engine which is used in making the deliveries between South Louisville and the Oak Street Yards could not act as a switch engine in making special deliveries between those two yards without neglecting the general business which it is required to do and if cars of live stock are to be delivered promptly and regularly from the L. & N. yards at South Louisville immediately to the said

Magnolia streets Stock — without going first to the Oak street yards of the L. & N. R. Co., it will practically require the service of another switch engine and crew to do this work.

In brief recapitulation of what I have said as to the difference between the manner in which the live stock business is now
176 handled by the L. & N. R. Co. and the manner in which it would have to be handled if deliveries to the Southern Railway for the Central Stock Yards be required, I will say that at present trains containing cars of live stock come into the South Louisville Yards with the live stock cars al- together as far as possible, so that they can be easily disconnected from the balance of the train and then be taken in one lot by one switch engine from the South Louisville Yards to the Bourbon Stock Yards near East Louisville, where they can all be delivered and stock promptly unloaded but if the L. & N. R. Co. is compelled to make deliveries of live stock to the Southern Railway for the Central Stock Yards, it will be necessary when trains containing live stock cars come into the yards at South Louisville, first to separate the live stock cars, from the dead freight cars, and then to divide up the live stock cars placing those destined for the Bourbon Stock Yard to themselves, and those destined for the Central Stock Yards to them-
177 selves, and then to have one engine take the Bourbon Stock Yard cars by way of the Louisville Railway Transfer track to the Bourbon Stock Yards, and to have another engine to take the Central Stock Yard cars northwardly on the main tracks of the L. & N. R. Co. to its Oak street yards, and then to have another engine take them from these Oak Street yards to the Magnolia Street connection and there deliver them to the owners of that track whence they may be ultimately delivered to the Southern Railway, or else the L. & N. R. Co. will have to employ a special engine to take these Central Stock Yards cars directly from its yards at South Louisville to the Magnolia street connection, in which event this engine will have to get around behind these cars and push them into this connection.

All of this service will of course require additional equipment, and the employment of additional labor and the use of a greater number of tracks in making separations of the cars, and an
178 entire re-arrangement of the L. & N. R. Co. method of handling its live stock business as it now conducts the same under its contract with the Bourbon Stock Yards Company which was in existence twenty years before the Central Stock Yards Company was ever thought of. And moreover this extra handling of stock the additional shifting of cars produces just that much more wear and tear upon the live stock itself, with that much additional risk of injury and damage. And in this connection I may add that when the live stock is delivered on the said Magnolia street tracks, if then taken by the Southern Railway it is necessary to run the said cars westwardly along Magnolia Avenue a distance of about half a mile, to a connection with the regular main track of the Southern Railway and thence from this connection, in a southeastwardly direction on the main track of the Southern Railway a distance of about a

mile and a half to a point near the Central Stock Yards where the said cars will be taken from the main track of the Southern
179 Railway and put upon a track which belongs not to a Southern Railway, but to one H. B. Bernard, as trustee for the Louisville Terminal Railway on which tracks of the Louisville Terminal Railway the cars will then be carried to the delivery pens of the Central Stock Yards Company.

I desire to say further and do say with regard to the Louisville and Nashville Railroad Company's method of doing its live stock business that it has made absolutely no discrimination either in favor of or against any shippers or consignees or owners of live stock, nor is any such discrimination made at the Stock Yards of the Bourbon Stock Yards Company. All persons interested in livestock are treated absolutely alike. The Railroad Company made the contract heretofore mentioned with the Bourbon Stock Yards Company simply because it was necessary for it to establish a live stock depot for the Louisville market in order that live stock handled by it might be properly cared for; and it made the contract with the Bourbon Stock Yards Company for the establishment of this depot, because it believed that the public could be better and more efficiently served in this way than in any other way. And since the making
180 of the contract the Louisville and Nashville Railroad Company, has, without any discrimination of any kind, simply insisted steadfastly that all live stock coming to or going from the Louisville market by the lines of the Louisville & Nashville Railroad Company should be received and delivered at the live stock depot aforesaid, and nowhere else. I feel and know that it would be just as much contrary to the meaning and purpose of the contract between the Louisville & Nashville Railroad Company and The Bourbon Stock Yards Company to deliver live stock to another railroad company or carrier of any kind at some other place than at the Bourbon Stock Yards to be thence taken a short distance and delivered at the Central Stock Yard at the edge of the City of Louisville, as if the delivery was actually made to such Central Yards by the Louisville & Nashville Railroad Company itself. And it would be just as burdensome on the Louisville & Nashville Railroad Company to make such delivery to another carrier at some other point than at the Bourbon Stock Yards as it would be to make a special delivery of such live stock
181 to any individual owner or consignee of stock at some other place than said regular depot.

All of the live stock referred to in the petition in the case of Central Stock Yards Company *vs.* Louisville & Nashville Company in the Jefferson Circuit Court, so far as the live stock therein mentioned was handled by the Louisville & Nashville Railroad Company at all, was delivered and unloaded at the Bourbon Stock Yards before that action was instituted, and the live stock contained in car #18727 was sold at the Bourbon Stock Yards by the owner thereof. As to the remainder of said live stock, the Louisville & Nashville Railroad Company got together other cars and reloaded the said live stock in them, and delivered them to the Southern Railway Company, be-

cause, on application to the Hon. Emmett Field, who has issued the restraining order in said action, he stated that in his opinion the restraining order required the company to do this although the stock had actually been delivered and unloaded at the Bourbon
182 Stock Yards before the suit was instituted or the restraining order issued.

MILTON H. SMITH.

Subscribed and sworn to before me by M. H. Smith this 9th day of November, 1901.

My commission expires at the end of next session of Senate.

E. C. TURNER,
Notary Public.

This agreement made and entered into this 20th day of September, 1888, by and between the Louisville & Nashville Railroad Company, first party, and the Bourbon Stock Yard Company, second party, Witnesseth:

That whereas, the second party is the co-owner and lessee of two stock yards, one situated in the vicinity of Fourteenth and Kentucky Streets, and the other at the head of Market Street, both
183 in the City of Louisville, and contiguous to the Railroad Lines of the first party,

And whereas on the 8th day of October, 1880, the parties hereto entered into an agreement running for ten years from that date, under which the first party undertook to deliver so far as it legally could, to the second party, all live stock shipped over the first party's lines and consigned to the City of Louisville, the second party agreeing to receive, unload, care for and deliver same; also to load live stock shipped over the first party's lines and consigned to the City of Louisville, the second party agreeing to receive, unload, care for and deliver same; also to load live stock for shipment and to charge not more than eighty cents per car for loading and unloading such live stock.

And whereas on the nineteenth day of March, 1881 second party made a similar contract running for ten years from that date with the Louisville, Cincinnati and Lexington Railroad Company,
184 whereby similar agreements and services were to be performed at the second party's stock yards at the intersection of Market Street with the L. C. & L. Railway, the second party to charge not more than sixty cents per car load for loading or unloading live stock at said Market Street yard. The first party to this agreement having since acquired the property of the Louisville, Cincinnati and Lexington Ry. Co. succeeds to the obligations and privileges of that Company under said contract.

And whereas, the second party desires to make certain important additions and improvements to its stock Yards and their equipment also to build pens with a view to establishing a Mule Market adjacent to its present yards. And therefore, desires to have the above mentioned contracts extended so as to justify it in making the necessary expenditures to effect these improvements.

And whereas, other stockyards, have been located in the vicinity of Twenty-eighth and Broadway Streets in said city, in competition to the yards of the second party and being so located as to be
185 inaccessible to business passing from or to the lines of the first party; and that if the efforts now being made to establish business at these last mentioned yards should be successful, it would tend to divert business from the lines of the first parties, especially its lines between Louisville Cincinnati and Lexington, as stock shipped from those yards would naturally pass over the Kentucky and Indiana Bridge placing the first party as a disadvantage in competition for the transportation of such stock.

And whereas, the second party is willing to make a lower charge for the loading and unloading of live stock than is stipulated for in either of the present contracts above mentioned.

It is therefore agreed that for and in consideration of the premises and of the mutual covenants, stipulations and promises hereinafter set forth, and the profits to be derived therefrom, the parties hereto agree as follows:

1st. The second party agrees to maintain and keep in good order the two Stock Yards above mentioned each of sufficient ca-
186 pacity and with suitable accommodations for the carrying out of this contract; and at the Market Street Yards to make the necessary additions to the said premises and to build additional pens for the handling of mules, and will facilitate the establishing of a mule market at the said yard in addition to the facilities at present existing.

2nd. Both of the said stock yards to be always properly equipped with suitable fencing feeding pens and other conveniences for the proper care and handling of live stock such as are usual and customary in the best conducted stock yards in this country.

The second party further agrees to keep at the said stock yard a sufficient number of skilled workmen to perform the services herein undertaken by it, and generally to do such work and labor as is generally provided in Stock Yards of the best class, and especially that said workmen shall be skilled and well qualified to load or unload any or all live stock which may be received or delivered by the first party at the said yards.

And the second party agrees and promises to load, unload
187 and car- for, at its own risk of damages, all live stock that may require such loading or unloading on cars at the said yards, and to charge therefor no more than is charged at the same time for similar services by the Managers of other stock yards in said City, and in no event to charge more than fifty cents per car load for loading or unloading. No charge is to be made for loading or unloading where the shipment consists of less than a car load, as per-way-bill.

And the first party agrees to pay to the second party the charge not exceeding fifty cents per car, as above prescribed for each car load of stock loaded or unloaded at said yards from or for the first party's railroad lines; and the second party agrees that all charges for keeping feeding, and caring for live stock coming to its yard

under this contract directly or indirectly shall be reasonable; and said second party will not, without the consent of the proper officer of the first party, charge more for keeping, feeding and caring for the live stock of its patrons than is charged for similar services
188 or supplies by other stock yards in said City. And the second party shall be responsible for all charges for stock delivered by said first party upon delivery to it by the first party and shall pay the same promptly to the first party in such manner, and at such times as may be directed by the Traffic Manager of Gen'l Fr't Agt. of the first party and generally, in all matters relating to the shipment and delivery of the stock at said stock yards, the second party is to act as the agent of the shipper or consignees respectively, and to answer for and be responsible to them for the proper conduct and management of all such matters.

3rd. The first party agrees to maintain good order and repair all necessary and proper switches and side tracks for the safe and convenient loading and unloading of live stock at the said yards, but all the necessary chutes platforms, pens and appliances, necessary and proper (and of the best character) for the safe loading and unloading of live — at both the said yards shall be erected and
189 maintained in good order and repaired by the second party, subject to the direction and requirements of the first parties General Manager or Superintendent, and the second party hereby assumes all risk and responsibility for any damage or injury which may be sustained by stock received or delivered at either of said yards, and necessary charges, improvements or repairs required by the first party's General Manager or Superintendent shall be thoroughly and promptly made by and at the expense of the second party.

4th. The first party agrees that it will not lease, rent, or sell any of its ground in the City of Louisville for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said city, and it will establish no other stock depot in the said City, that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the roads, of the first party and consigned to the City of Louisville, and should any live stock be shipped to other person or persons in said city,
190 the first party hereby makes and agrees to make the stock yards of the second party the stock depot of the first party for said City and agrees to unload all live stock shipped to said city at the yard of the second party but if the provisions of this section of this contract be abrogated or invalidated by judgment of any court or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions and the second party shall at its own cost and expense, defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom.

5th. It is agreed that the delivery of stock in cars upon the switches or sidings provided for the purpose at the stock yards of the second party shall be deemed a delivery to the second party, and thence forward, the second party will be responsible to owners, consignors or shippers for the said stock.

191 6th. This contract is to take effect on October 1st 1888 and remain in effect for ten years from its date, unless sooner terminated by operation of law or judgment of court.

7th. The contracts of October 8, 1880, and March 19, 1881 mentioned in the preamble of this agreement, are hereby abrogated and annulled, except for the settlement of any unpaid accounts for services rendered unto them, or any legal questions that might arise under or by the execution of this contract.

In testimony whereof, the parties hereto have caused these presents to be executed by their duly authorized officers and their corporate seals affixed on the day and year first above written.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.] By M. H. SMITH, *Vice President.*

Attest: J. H. ELLIS, Secretary.

192 BOURBON STOCK YARD COMPANY,

[SEAL.] By J. G. BARRETT, *President.*

Attest: CLIFTON RODES BARRET, *Secretary.*

It is agreed between the Louisville & Nashville Railroad Company and the Bourbon Stock Yards Company, parties to the within agreement dated September 20th, 1888, that the same shall be extended for a term of ten years from the date of its expiration that is, for a term of ten years from September 20 1898 and each party, in consideration of the undertaking of the other agrees to perform and abide by all the terms, stipulations and conditions of the within agreement, for a term of ten years from September 20th, 1898 just as if said agreement had originally provided that it should remain in effect for twenty years instead of ten years from its date.

In consideration of the premises, the Bourbon Stock Yards Company further agrees that it will during the term of ten years
193 for which the within agreement is hereby extended, furnish through its own meter and at its own expense all water necessary in any way for the maintenance or operation of the stock yards named in the within agreements or necessary for the performance of its obligations under the within agreement, *are necessary for the performance of its obligations under the within agreement* as hereby extended, instead as heretofore, of using water through the meter of, and at the expense of the Louisville & Nashville Railroad Company.

In witness whereof said Louisville and Nashville Railroad Company and Bourbon Stock Yard Company hereunto subscribe their names and affix their corporate seals this the 12th day of July, 1897.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.] By M. H. SMITH, *President.*

Attest: J. H. ELLIS, *Secretary.*

194 BOURBON STOCK YARD COMPANY,

[SEAL.] By H. R. RAY, *President.*

Attest: GEORGE T. WOOD, *Secretary.*

195 STATE OF KENTUCKY, *County of Jefferson:*

J. P. Whiskeman being duly sworn says:

I am an assistant engineer in the office of the Chief Engineer of the Louisville & Nashville Railroad Company, located and residing in the City of Louisville. I file herewith as a part hereof a map which shows correctly the City of Louisville and the lines of the Louisville and Nashville Railroad Company, the Southern Railway, the Kentucky and Indiana Bridge Company, and an electric railway crossing the line of the Southern Railway near the Southern limits of the City of Louisville. It also shows the location of the Bourbon Stock Yards marked in red near East Louisville, likewise the location of the Central Stock Yards marked in yellow near South Louisville. The map is marked "Map of the City of Louisville showing the lines of the L. & N. Railroad, etc.," dated 1893, revised November 9th, 1901.

J. P. WHISKEMAN.

196 Subscribed and sworn to before me by J. P. Whiskeman, this 13th day of November, 1901.

My commission expires at the end of the next session of the Kentucky Senate.

HUSTON QUIN,
N. P., J. C., Ky.

197 Jefferson Circuit Court, Chancery Division.

30269.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of G. A. Birch.

G. A. Birch being duly sworn says he is now and has been for a number of years past the Superintendent of the Bourbon Stock Yards Company in the City of Louisville Kentucky. He has read the affidavit of R. M. Wathen, proposed to be filed by plaintiff herein in support of its motion for an injunction, and he says that certain statements of said affidavit are not true. He says the statement that "all stock coming to the Louisville market from the northern railroads entering Louisville and all other railroads than the Louisville and Nashville Railroad has been necessarily switched at or near South Louisville" is incorrect. He says it is feasible to make deliveries of live stock from said other roads via the tracks through Fourteenth street and along the river front to a point of con-
198 nection with the Louisville & Nashville Railroad and that in the past large quantities of stock have been so delivered at the Bourbon Stock Yards without being handled at South Louisville, or anywhere near there.

He further says it is not true that deliveries of live stock coming in over any railroad to the Louisville market other than the Southern Railway, can be made more quickly to the Central Stockyard than to the Bourbon Stock Yard. He further says it is not true that there has been extensive complaints on the part of shippers to the Louisville market because of the delay and damage to their stock occasioned in switching at South Louisville, or in making prompt delivery to the Bourbon Stock Yard. These complaints have been occasionally made and in some instance, affiant knows where unfounded.

Further he sayeth not.

G. A. BIRCH.

Subscribed and sworn to before me by G. A. Birch, this November 16th, 1901.

WM. T. HALE,
Notary Public, Jefferson County, Ky.

My commission expires Jan. 17, 1904.

199 STATE OF KENTUCKY, *County of Jefferson:*

J. F. Coady, being duly sworn, says:

I am agent and general yardmaster of the Louisville and Nashville Railroad Company at its freight yards at South Louisville, and as such have charge of the handling of freight that comes into those yards.

When live stock comes to Louisville by the Louisville and Nashville Railroad from the south, an effort is always made by those operating the train in which such stock is contained, to get the cars carrying the livestock all together in the train, so that when the train is broken up these livestock cars can be easily separated from the dead freight cars, and carried to their proper destination. When a train containing such cars reaches South Louisville, the road engine is disconnected from the train, and a yard engine takes charge of the train and breakes it up by placing the various cars where they belong. If there are both dead freight cars and livestock cars in the same train, it separates the live stock cars from the
200 dead freight cars. Another engine, which is called a transfer engine, then takes these livestock cars from South Louisville around by way of the Louisville Railway Transfer tracks (which belong to the Louisville and Nashville Railroad Company) to the Bourbon Stock Yards near East Louisville, at which yards the cars are all delivered and the stock promptly unloaded.

When freight cars are received at South Louisville which are destined to some point on the mail tracks north of South Louisville, these cars are taken by another engine called a transfer engine, but different from the one heretofore mentioned, and carried by means of these main tracks northwardly to the yards between Oak Street and Kentucky Street. (In the direction of the 9th and Broadway Freight Depot.) Having been taken into these Oak Street freight yards by the transfer engine, they are then taken by a switch engine

and distributed to their proper places. If any of them are destined from points between South Louisville and the Oak Street
201 yards they are first taken to the Oak Street Yards by the transfer engine, and then taken by the switch engine from the Oak Street Yards to the point of destination. The reason for doing business in this way is that this transfer engine running between the two yards mentioned has not time to make special deliveries of cars at points between these two yards.

If the Louisville and Nashville Railroad Company be compelled to make deliveries of livestock to the Southern Railway for the Central Stock Yards, then when a train containing livestock reaches the South Louisville yards, it will be necessary, first to separate the live stock cars from the dead freight cars, and then to separate the live-stock cars destined for the Bourbon Stock Yards from the live stock cars destined for the Central Yards, setting those for the Bourbon Yards on one track and those for the Central Yards on another track. Then one transfer engine will have to take the Bour-
202 bon Stock Yards cars around by the railway transfer tracks to the Bourbon Stock Yards near East Louisville, a distance of about four miles; and another transfer engine will take the Central Stock Yards cars northwardly on the same tracks about two miles and a half, to the Oak Street Yards, whence they will be taken by a switch engine southwardly again on the main tracks about half a mile to Magnolia Avenue, and there placed upon the track of the Kentucky and Indiana Bridge and Railroad Company. If they are received here by the Southern Railway, they will then be taken westwardly along Magnolia Avenue, a distance of about half a mile to the point where the Magnolia Avenue intersects the main track of the Southern Railway, and from this point of intersection they will have to be carried by the main track of the Southern Railway in a south-easterly direction about a mile and a half to a point where the main track of the Southern Railway is crossed by a railroad track, which I understand belongs to one H. B. Bernard, Trustee for the Louisville Terminal Railway; whence they will then be taken over the tracks of said Terminal Railway to the delivery pens
203 of the said Central Stock Yards Company, a distance of about an eighth of a mile, thus making the total distance traversed by the Stock from the time of leaving the said South Louisville Yards to the arrival at the Central Stock Yards, a distance of about five and one-eighth miles.

If the company should be compelled to make an immediate delivery of live stock from the South Louisville Yards to the track at Magnolia Avenue, without first running the same into the Oak Street Yards, and thence back to Magnolia Avenue, it would not be possible for this to be done by the regular transfer engine which carries freight cars from the South Louisville Yards northwardly on the main tracks, without neglecting other business which it is necessary for that engine to do, as it has all that it can do in conducting the regular through transportation between the South Louisville Yards and the Oak Street Yards without stopping to make

special deliveries between those yards. So that if a direct delivery from the South Louisville Yards to the Magnolia Street
204 tracks should be required as a regular matter for all live stock cars destined for the Central Stock Yards, it would require the employment of a switch engine other than the present engine which now does the business of the Company in carrying freight cars northwardly from South Louisville, and such switch engine before starting from South Louisville with such cars would be compelled to run around the cars and get behind them so as to push them northwardly into the Magnolia Street track, because the said track in making the connection with the Louisville and Nashville tracks curves only to the south, and not to the north; and if an engine running northwardly with cars behind it should run in upon said Magnolia Street tracks, there would be no way for it to get out. It is necessary therefore for the engine making such deliveries, to push the cars in ahead of it and then back out.

As to the fourth and G Street crossing between the Louisville and Nashville Railroad Company and the Southern Railway, this would not be a practicable place as a regular place of exchange for
205 livestock cars between the two companies, especially if any considerable amount of such business was to be done, because there are no side tracks at this place, and if cars should be carried to that point by the Louisville and Nashville Railroad Company and delivered to the Southern Railway Company, it would have to place such cars on the main track of the Southern Railway, which is a single track, where the same would be right in the way of all the regular trains of the Southern Railway Company running into or out of the City of Louisville. And so, on the other hand, if the Southern Railway should attempt to deliver live stock cars at this place to the Louisville and Nashville Railroad Company, it would be compelled to set said cars on the main tracks of the Louisville & Nashville Railroad Company, over which all of its regular trains which run into its main depot at Broadway, are compelled to pass, whether in going to or from the City of Louisville.

I have heretofore spoken of livestock coming into the
206 Louisville market by the Louisville and Nashville Railroad by the South. Nearly all of such livestock does come from the south. Very little livestock comes into the Louisville Market over the Louisville & Nashville Railroad from the East. Such as does come from the East is delivered at the Bourbon Stock Yards near East Louisville. If the Company should be compelled to make deliveries of livestock coming from the East to the Central Stockyards, it would be necessary to separate the Central Stock Yards cars from the Bourbon Stock Yards cars at East Louisville, and then to bring these Central Stock Yards cars around by the railway transfer tracks, a distance of about four miles, to South Louisville, from which point they would be handled to the Central Stockyards in the same manner heretofore described, to-wit: they would be taken by a transfer engine from the South Louisville Yards northwardly about two miles and a half to the Oak Street yards thence by a switch

engine southwardly about half a mile to the Magnolia Street tracks; thence westwardly along Magnolia Street about half a mile to the Southern Railway tracks, thence southeastwardly along said
207 Southern Railway tracks about a mile and a half to the Louisville Terminal tracks; thence by the Louisville Terminal tracks about an eighth of a mile to the delivery pens of the Central Stock Yards.

J. F. COADY.

Subscribed and sworn to before me by J. F. Coady this 9th day of November, 1901.

My commission expires at the end of the next session of the Senate.

T. K. HELM,
N. P., J. C., Ky.

Jefferson Circuit Court.

THE CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Affidavit for Defendant on Plaintiff's Motion for Temporary Injunction.

G. W. Embry, C. Tatum, J. M. Harper, Dan Brooks, J. L. Mansfield, John M. Letterle, W. D. Carrithers, Taylor Watkins,
208 G. E. Butterweck, Henry Knight, Ben Joseph, H. Siegelstyl, S. Snodgrass, Clay McCandless, J. Floyd Burt, W. L. Kennett and F. H. Goodridge being each duly sworn for himself deposes and says:

That they and each of them have been for a number of years past engaged in the live stock business at the Bourbon Stock Yards in the City of Louisville and are thoroughly familiar with the capacity and facilities of said yard for promptly handling and caring for the live stock which is shipped to and from the City of Louisville. With the exception of a very short period (during the past year when the Union Stock Yard was in operation) the Bourbon Stock Yard has operated and conducted the only stock yards in the City of Louisville for more than ten years last past, during which time it has always been equipped and maintained with ample and the best facilities for unloading, feeding, watering, weighing and reloading live stock of every description and is now so equipped and maintained with such facilities which are ample for promptly
209 handling all of the live stock that is shipped to or from the City of Louisville, and for the services rendered and accommodations offered, only reasonable charges are made.

They further, severally say, that as the result of their experience and observation it is their opinion that the entire live stock business

of the City of Louisville is not of sufficient magnitude to maintain two separate stock yards at different points, where live stock of different kinds is received for sale and shipment, and further that the interests of sellers and buyers is promoted and best served by concentrating said business as nearly as possible at one point, where the seller of live stock will have the advantage of exposing his stock to all of the buyers in the market.

They state that for many years past it has been and is yet the custom in Louisville to have the principal sales of live stock on Monday of each week, the offerings and sales on that day largely exceeding the offerings and sales for all the balance of the week.

210 The success of the live stock market of Louisville as well as of all other large cities is dependent largely upon the attendance of buyers from other places, and the sales at Louisville are largely attended on Mondays by numbers of such buyers who also buy live stock in other markets.

It is essential in order to attract these buyers to the Louisville market to have one certain day of each week when live stock will be offered in large quantities, and it is mainly for this reason that Monday has been selected as the principal day of each week for offering and selling live stock in the Louisville market. This involves the transaction of an immense amount of business within a very limited time and prevents buyers from attending at different stock yards especially if they are separated a distance of five or six miles without means of rapid transit between them as is the case of the Bourbon and Central Stock Yards in Louisville. Such buyers attend the stock yards for the purpose of exercising their individual judgment and inspection in buying live stock without depending on the judgment or inspection of other people.

211 In the same manner, and for the same reason, local buyers who buy largely for non-residents and for shipment to other places, are restricted in their operations to one stock yard as it is impracticable for them to carry on their business at two stock yards far apart from each other.

For the same reason live stock commission merchants in Louisville, who receive and sell consignment of cattle for shippers in the country, are compelled practically to confine their operations to one yard, and at the present time live stock commission merchants who control over three fourths of the live stock offered and sold in the Louisville market, have their places of business at, and do business only at the Bourbon Stock Yards, and have announced their intention to continue to do business there exclusively.

They say that in the most of the large cities of the country notably Kansas City and Chicago, the largest live stock markets in the world, and in nearly all of those larger than Louisville, and in many which have a much more extensive line of stock trade than

212 Louisville, the entire live stock business is carried on at one yard, and they give it as their opinion that the best interests of all persons interested in selling or buying live stock in the Louisville market will be best promoted and fostered by having all of

said business carried on at one place, so long as ample facilities are provided and reasonable charges are made.

Further they say not.

HENRY KNIGHT.	G. W. EMBRY.
JOSEPH COX.	C. TATUM.
BEN JOSEPH.	J. M. HARPER.
H. SIEGELSTYL.	DAN BROOKS.
S. SNODGRASS.	J. L. MANSFIELD.
CLAY McCANDLESS.	JOHN M. LETTERLE.
J. FLOYD BURT.	W. D. CARROTHERS.
W. L. KENNETT.	TAYLOR WATKINS.
F. H. GOODRIDGE.	G. E. BUTTERWECK.

Subscribed and sworn to before me by Henry Knight, G. W. Embry, Ben Joseph, C. Tatum, H. Siegelstyl, J. M. Harper, Dan Brooks, S. Snodgrass, J. L. Mansfield, Clay McCandless, Jno. M. Letterle, J. Floyd Burt, W. L. Kennett, Taylor Watkins,
213 F. H. Goodbridge & G. E. Butterweck this 11th day of November 1901.

WM. A. BURNETT,
Notary Public, J. C., Ky.

Commission expires Jan. 26th, 1902.

At a court held on the 23rd day of November, 1901:

The Court being advised delivered a written opinion herein which is ordered to be and is now filed and made part of the record herein.

And in pursuance of said opinion it is ordered and adjudged that the defendant Louisville & Nashville Railroad Company be enjoined and restrained from neglecting, failing, or refusing to receive, and said Louisville & Nashville Railroad Company is hereby required and compelled until further order of the Court herein to receive at any and all of its stations in Kentucky, and to bill, transport, transfer, switch and deliver in the customary way at its most convenient and practical point of physical connection between its tracks in Louisville, Kentucky, and the tracks of the Southern Railway Company in Kentucky at Louisville Kentucky, and at
214 their Seventh and Magnolia Street connection, *any and all live* stock and other freight *consigned to the Southern Railway Company in Kentucky at Louisville, Kentucky, for the Central Stock Yards Company for transportation and delivery by said Southern Railway Company in Kentucky to plaintiff at Central Stock Yards Kentucky or any other person or persons at said station or in care of said Central Stock Yards Company at said Station*, and to so transfer, switch and deliver to said Southern Railway Company in Kentukey at Louisville, Kentucky, and at said point of physical connection any and all live stock and other freight coming over its lines in Kentucky consigned to the Central Stock Yards Company at Central Stock Yards Kentucky or any other person or persons at said station or in care of said Central Stock Yards Company at said station for transportation and delivery by said Southern Railway

Company in Kentucky at Louisville, Kentucky, as so billed and consigned.

The foregoing order will be issued by the Clerk and be-
215 come effective from and after the execution of bond by the plaintiff to the defendant to be approved by the Clerk of this Court and conditioned as required by law in the sum of Ten Thousand ($10,000.00) Dollars.

Said opinion filed herein on the 23rd day of November, 1901, is as follows, to-wit:

Jefferson Circuit Court, Chancery Division.

No. 30269.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Opinion.

This is an action by the Central Stock Yards Company in which is asked a mandatory injunction against the Louisville & Nashville Railroad Company compelling it to switch and deliver to the
216 Southern Railway Company in Kentucky, at one of the points of physical connection between the tracks of these two roads in Louisville, six car-loads of live stock, which have been shipped over the Louisville and Nashville railroad to the Central Stock Yards, and to so switch and deliver in the future, all like freight that may be brought by it, destined to the Central Stock Yards, and that it be compelled to receive, switch and deliver all live stock offered to it for shipment over its lines to the Central Stock Yards. A temporary order was granted in accordance with the prayer and the six cars have been delivered to the Southern Railway and by it to the Central Stock Yards. The action is now submitted upon plaintiff's motion for an injunction pending the preparation and trial of the action upon its merits. The Central Stock Yards are owned by the Central Stock Yards Company, and are situated upon the line of the Southern Railway about nine miles from its terminus in Louisville, and just beyond the southeastern limits of that city.

The "break up yards" of the L. & N. R. R. are near the
217 intersection of Fourth and G Streets in South Louisville and only about a hundred yards from the Central Stock Yards. The L. & N. R. R. Company's tracks and the tracks of the Southern Railway intersect at this point. There is also physical connection by switch between the tracks of the two roads at Seventh and Magnolia Streets which is about a mile and a half north-east of the "break up yards." This last route is, and has been in constant use for quite a while, in transferring cars as is here asked.

The plaintiff, the Central Stock Yards Co. shows that it has constructed and has in operation a modern Stock Yard plant, and that its business is that of feeding, watering, properly caring for,

having sales made of and the safe loading and unloading of live stock of every character; that the lines of the defendant, the Louisville and Nashville Railroad Company extend through the principal counties in Kentucky wherein live-stock is raised in any con-
considerable quantity for sale; that more than fifty per cent.
218 of all the live stock raised in Kentucky can reach a market therefor only over the line of the defendant; that defendant has announced its purpose to decline to receive at any station on its line any live stock to be billed, transported, transferred or switched to any connecting carrier and particularly to the Southern Railway Company at Louisville for delivery by such connecting carrier to the plaintiff's yard or to any person thereat, and that in keeping with its said announced purpose defendant has distributed circulars throughout the country and given instructions to all of its station agents and employees not to receive, bill, transport, transfer or switch any live stock at any of the points of physical connection between its lines and those of the Southern Railway Company in Kentucky at Louisville for delivery by the latter Company to plaintiff, or any one at its yards. It alleges that such action on the part of the defendant was and is unlawful, arbitrary and discriminative against plaintiff and other persons doing business with plaintiff, is of great injury to plaintiff, and that the injury
so inflicted was and is of a continual character not sus-
219 ceptible of actual pecuniary estimation, and that resort to actions at law will involve a multiplicity of suits, none of which could or would end the litigation, and therefore the only adequate remedy is in equity and by injunctive process.

The defendant presents three defenses.

First. That the shipper and not the plaintiff Stock Yards Co. is the party injured, if any one is injured, and that the Stock Yard Company can not therefore maintain this suit.

Second. That it has heretofore established and furnished a sufficient depot known as the Bourbon Stock Yards, with sufficient facilities for the handling feeding and caring for all live stock coming to the City of Louisville, and that it is not required to establish any other live stock depot in said city; and

Third. It admits that it can make a delivery of all live stock consigned over its line to the Southern Railway Company at
220 Louisville, Kentucky, and destined to the Central Stock Yards, or to the plaintiffs Central Stock Yards Company, or in its care but that to do so, the said Louisville & Nashville Railroad Company will or may have to employ a special engine to take such live stock directly from its yards at South Louisville to the Magnolia and Seventh Avenue Connection of its tracks with the tracks of the Southern Railway Company in Kentucky at Louisville, for delivery by such latter road to said Central Stock Yards Company, and that in so doing the engine would have to get behind these live stock cars and push them into this point of physical connection, and that an extra engine and crew will have to be employed.

This action is based upon section 213 of the present constitution

of Kentucky, which reads as follows, in so far as it applies to railroads:—

"All railroad * * * companies, organized under the laws of Kentcky, or operating, maintaining or controlling any railroad in this State *shall* receive, transfer, deliver and switch empty or loaded cars and shall move, transport, receive, load or unload all the
221 freight in car loads or less quantities coming to or going from any railroad, or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges preference draw back or rebate in favor of any person corporation consignee or consignor in any matter as to payment, transportation, handling or delivery; *and shall so receive, deliver, transfer and transport all freight as above set forth from and to any point where there is a physical connection between the tracks of said companies.*"

The defendant by way of answer to the demand of plaintiff that defendant be required to comply with the mandatory section of the Constitution, says it has, by contract with the Bourbon Stock Yard Company, established that place as its live stock depot in the City of Louisville. The Fourth clause of that contract reads as follows:—

"The first party agrees that it will not lease, rent or sell any of its ground in the City of Louisville for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said city, and will establish no other stock depot in the said
222 city, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the roads of the first party and consigned to the City of Louisville, and should any live stock be shipped to other person or persons in said city, the first party hereby makes and agrees to make the stock yard of the second party the stock depot of the first party for said city, and agrees to unload all live stock shipped to said city at the yards of the second party, *but if the provisions of this section of this contract be abrogated or invalidated by judgment of any court or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions and the second party shall, at its own cost and expense, defend any and all litigations which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom.*"

223 In this connection counsel for plaintiff cited Section 214 of our Constitution, which reads as follows:—

"No railway * * * company shall make any exclusive or preferential contract or agreement with any individual, association or corporation for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier."

1. In answer to the objection that the plaintiff has no right to maintain this action, it is clear that the plaintiff is vitally interested in the result of the action and the ultimate success of a stock yard business is largely dependent upon requiring the defendant to comply with the provisions of the Constitution *supra*, and further,

that injunctive process is the only adequate remedy. This is shown by the stock yard cases relied upon by counsel for defendant.

In Covington Stock Yards Company *vs.* Keith, 139 U. S. 128, and injunction was granted and the decree appealed from was affirmed, which necessarily held that such remedy was the only adequate and proper one for such state of case.

In Butcher's and Drover's Stock Yards Co. *vs.* L. & N.
224 R. R. Co., 14 C. C. A., 290, 67 Fed. Rep., 41, objection was raised to the right to maintain such suit because of the continuous supervision by the Court which would become necessary if such relief was had. In overruling that contention, Judge Taft, said:

"It is said that the Court of equity will not attempt to enforce the remedy here sought, because it will involve a continuous supervision by the Court of transactions between the complainant and the defendant, which would tax the court with the details of superintendence beyond anything a court of equity will undertake; and a number of cases are cited to the point. We think the objection can not be sustained."

And in Interstate Stock Yards Company *vs.* R. R. Co.'s, 99 Fed. Rep., 483 the court says:

"The nature of the wrong complained of, the fact that it is of a continuing character, that it is not susceptible of accurate pecuniary estimation, and that resort to actions at law would involve a multiplicity of suits, none of which would end the litigation, all
225 tend to make it manifest that the remedy in a court of law is not as adequate to afford relief as is the remedy in a court of equity. The jurisdiction in equity does not depend upon the fact that there is no remedy at law. It is afforded whenever the remedy at law is not as full, adequate and complete as in a court of equity. The rule that equitable relief will not be granted until the complainant's right of title in respect of a subject matter has been established in an action at law, does not apply where the subject-matter of the litigation is to prevent discrimination in violation of the interstate commerce act."

High on Injunction, Section 616, and a great number of authorities will be added in support of the doctrine above numerated in the Interstate Stock Yards Company case.

The question as to whether or not the defendant, the Louisville & Nashville Railroad Company, shall be required by this court to establish and furnish any live stock depot other than the Bourbon Stock Yards for the handling, feeding and caring for live stock transported by the Louisville & Nashville Railroad Company,
226 is not involved in this case.

It is not asked in the petition that the Louisville and Nashville Railroad Company make delivery to the Central Stock Yards Company, or to any person at its yards, or to any stock yards located upon its lines. *On the contrary, this is purely and simply a switching case under section 213 of the Constitution* so far as the facts set forth in the petition are concerned. For the sake of the agreement,

the defendant's contention that it will not be required to furnish more than one live stock depot in a city may be admitted, but that fact would not in my opinion affect the question presented for decision. The petition in this case is fashioned after the petitions in the numerous cases of the like kind which have been planted upon this hearing. I am of opinion that the petition states a cause of action, and that the plaintiff may maintain it.

2. In considering the second ground of defense, it is important to keep in mind the fact that plaintiff is proceeding under the
227 express authority and letter of the Constitution bearing directly upon the point under consideration.

The numerous cases cited on the oral argument may be classed in somewhat general terms (1) as stock yard cases proper, and (2) cases involving interchange of cars at physical connections of railways. The first class of cases have been generally decided upon the general principles of the common law as applicable to common carriers, while the second class is governed by Constitutions or Statutes.

It is a mistake to say that we have, in the case at bar, a stock yard case proper. This latter class properly embraces only those cases in which the Courts have considered how far the law would compel the delivery of live-stock at some stock yard in a given city other than the one owned and controlled by the carrier has selected. Covington Stock Yards Co. *vs.* Keith, 139 U. S., 128, is a case of that class.

As we are not now considering exclusively a stock yard case it is not valid that we look to these cases. But let us see if
228 the numerous cases in this class can be said to establish any rule. I think they establish this rule only: That where the carrier furnish- its own stock Yards either by building them itself or adopting the yards of another, it cannot be compelled *Under the common law* or the Interstate Commerce Act to furnish any other stock yard or any appliances therefor for loading or unloading live stock *of* any other point in the city upon its own lines than that at its own yards.

But where ample facilities for loading and unloading are furnished by another line; and yards are there erected on the carrier's track, so that the carrier may deliver stock with equal safety at said yards, then such delivery may be required certainly under our constitution if not at common law.

If this latter proposition is put in doubt by some conflict of authority under the common law it is certain that wherever there is statutory or Constitutional enactment looking to a prohibition of any discrimination in regard to the delivering, handling, care and custody of freight, there can be no such discrimination, and
229 similar treatment may be demanded by all in the same business.

Section 214 of the Constitution does not mean that — carrier must build platforms or chutes &c. for any and all who may want stock yards on the line of the road, but it does mean that all individuals and all corporations engaged in the stock yards business must be

treated alike and no exclusive or preferential contract for the care and custody of stock can be made.

We have here nothing to do with the modification made in Section 215 on the subject of freight rates between two given points on the same road or with the meaning of the words "freight of the same class and on the same conditions" found in that Section.

But aside from section 214 and independent of it the case we are considering comes clearly within the provisions of section 213 of the Constitution where the matter of shipments to points where there is physical connection between railways is considered.

230 The terms of this section are explicit, and no amount of argument can make its meaning clearer than that expressed by its very words. But if there were any doubt as to the meaning of the Constitution and we were required to look to the debates of our Constitutional Convention or to the decisions of the Courts upon similar questions for aid, we are still further fortified in the conclusions heretofore reached.

From the debates of the Constitutional Convention (Vol. 4, pages 5118 to 5162) it will be seen that the Convention in the interest of the General public, recognize the fact that it is no proper business of a common carrier to foster particular enterprises, but deriving its franchise from the Legislature and depending upon the will of the people for its very existence it is bound to deal fairly with the public to extend them reasonable facilities for the transportation of their persons and property, and to put all of their patrons upon *all absolute equality.*

Railroad Company *vs.* Goodridge, 149 U. S. 680.

231 Public policy forbids that common carriers shall be permitted to favor one shipper, or one class of shippers in discharging the general duty to accept and carry good- without discrimination or prejudice between classes.

L. N. R. R. Co. *vs.* Pittsburg and Kanawha Coal Co. decided November 13, 1901, by court of appeals of Kentucky but not yet reported.

As incidental to the operation of a railroad it has the power to interchange cars with a connecting carrier, and such is the ordinary and usual way of doing business between common carriers; and the overwhelming weight of authority is to the effect that common carriers may, by Constitutional requirements or legislative enactment, be compelled to interchange cars, the one with the other, for delivery in the line of the one or the other, to a named consignee.

Jacobson *vs.* Wisconsin, Minnesota and Pacific R. R. Co., 71 Minn. 532, S. C. 40, L. R. A. 392 70 Am. St. Rep. 364.

Burlington C. R. & N. R. R. Co. *vs.* Dey, 83 Iowa, 334, 335,
232 336; S. C. 12 L. R. A. 436.

Peoria and P. Q. R. Co. *vs.* Chicago R. I. & P. R. Co. 109 Ill., 139-140.

Michigan C. R. Co., *vs.* Smithson, 45 Mich., 221-222.

The case of Inman *vs.* St. Louis S. W. R. Co., 37 S. W. Rep., 37 reviews the authorities at length and is in point.

In the Jacobson case, *supra,* the Supreme Court of Minnesota in passing upon the constitutionality of a legislative enactment requires substantially what section 213 of our constitution requires concludes its decision in the following language:

"We are clearly of the opinion that the legislature has the power to compel a common carrier to do business in the ordinary and usual way and therefore may compel such interchange of cars as incidental to the business for which the company was chartered."

In our Court of Appeals in the case of R. R. Co. *vs.* Williams, 95 Ky. 199, the defendant relied upon section 213 of the State Constitution as an exemption from liability for damages because it had been compelled by section 213 to receive the car which had caused the accident. The Court recognized the inability of the company to refuse the car, but decided the case upon another point:

It seems to us the constitutional provisions by which one Railroad Company is compelled to take cars of another over its line can have no bearing on this case. If the cars were in an unsafe condition, or were so defective in their construction as to render it unsafe to those who are required to handle them it is the duty of the Company to refuse to receive the car if such defect exists, *and no other construction it seems to us can well be given this clause of the Constitution.*"

It thus affirmatively appears that our Court of Appeals has construed Section 213 of our Constitution to the effect that if a car offered to a connecting carrier is not unsafe it is, by the said constitutional provision, required to accept it.

In the Smithson case, *supra,* 45 Mich., at page 222, in considering a Legislative enactment similar to the provisions of section 213 of our Constitution, Judge Cooley said:

"The necessities of commerce required this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish could hardly fail to be speedy and effectual."

In Peoria &c. R. R. *vs.* R. R. Co., 109 Ill., 139, the Supreme Court of Illinois held that common carriers, even in the absence of a statute were required to interchange cars, and in reaching such conclusion used the following language:

"It is a matter of so much public concern that judicial notice may be taken of the fact that cars belonging to different Companies are interchangeably used on all the principal railroads in the United States, and that no company could do any considerable freighting business that did not conform to this general usage without such usage it would be difficult, if indeed it would be possible to transact the commercial business of the country."

In Inman *vs.* St. L. S. W. R. Co., 37 S. W. Rep. 37-45, an elaborate review of the authorities will be found and this constitutionality of a legislative enactment similar to the constitutional provision as contained in section 213 of our Constitution is upheld.

In the Iowa case, *supra*, vol. 82, page 336, S. C. 12, L. R. A. 436, the Supreme Court of that State in passing upon and upholding the constitutionality of a statute similar to the constitutional requirements of section 213 of our Constitution, said:

"The fact that the transfer of cars from one Company to another, for the transportation of property over more than one railroad, without breaking bulk has been practiced so long as to be recognized as of the course of business of which we will take judicial notice (Peoria and P. U. Ry. Co. *vs.* Railroad, 109 Ill., 135), is a complete answer to the complainants made in the objections under
236 consideration. Surely a course of business so long pursued and so extensively prevailing, and demanded by the commerce of this country cannot, when recognized and required by Statute become so objectionable in principle, so oppressive in operation as to require the statute to be declared unconstitutional. A railroad company, as a common carrier, is required to receive and transport freight offered to it for transportation. The reasons upon which this rule is founded impose upon it the obligation to haul cars of other companies brought to it for transportation over its own road. Peoria and P. U. Ry. Co. *v.* Railroad, 109 Ill., 135. As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing the duty thus imposed cannot be regarded as interfereing with the constitutional guaranties for the protection of the rights and property of such companies."

Railroad corporations are quasi public corporations ded-
237 icated to the public use. In accepting their charters they necessarily accept them with all the duties and liabilities imposed upon them by law. Thus a quasi public trust is created which *closes* the public with an interest in the use of railroads, which can be controlled therein.

McCoy *vs.* C. I. St. L. & C. R. Co., 13 Fed. Rep., 3;
Coe *vs.* L. & N. R. R. Co., 3 Fed. Rep., 778;
Interstate Stock Yards Co. *vs.* R. R. Cos., 99 Fed. Rep. 472;
L. E. & St. L. Consol. Ry. Co. *vs.* Wilson (late Indiana case), 18 L. R. A., 105.

In McCoy case, *supra*, quoting from the syllabus, it is said:—

A railroad company cannot bind itself to deliver to a particular stock yard all live-stock coming over its line to a certain point, but it is bound to transport over its road and deliver at such point, reached by its tracks or connections, all live stock consigned,
238 or which the shippers desire to consign, to them, upon the same terms and in the same manner as under like conditions it transported and delivered to their competitors; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yards discriminated against."

In the Coe case, *supra*, the Court said:—

The facts suggest the very important inquiry, how far railroads called into being — subserve the public, can be lawfully manipulated by those who control them to advance, incidentally their own private

interest, or depress the business of particular individuals or localities for the benefit of other persons or communities. As common carriers they are by law bound to receive, transport and deliver freights offered for that purpose, in accordance with the usual course of business the delivery, when practicable, must be to the consignee."

In the Wilson case, *supra,* quoting from the syllabus, it is said:—

239 A contract with the shipper of such character as to destroy the business of his rivals by giving him a monopoly is unjust without regard to the consideration upon which it is based."

At common law therefore, and independent of the mandatory provisions of section 213 of our constitution it would seem that it is the duty of the Louisville Nashville Railroad Company to make delivery of live stock to the Southern Railway Company at one of the points of physical connection between its tracks and the track of the Southern Railway Company in Louisville for delivery by the latter company to the Central Stock Yards, because such a delivery is practicable.

I have carefully examined the cases relied upon by the defendant. In my opinion, they are all easily distinguishable upon principal, from the case at bar.

The case of Butcher's and Drovers' Stock Yards Company *vs.* L. & N. R. R. Co., 67 Fed. Rep., 36 (14 C. C. A. 290) was
240 not at all like the case at bar. The first sentence in the statement of facts by Judge Taft is as follows:—

"This was a suit by Butchers' and Drovers' Stock Yard Company against the Louisville & Nashville Railroad Company, *to compel it to build a spur track connecting with complainant's Yards.*"

It was not a "switching" case, and there was no constitutional or statutory provisions covering the case.

The case of Covington Stock Yards Company *vs.* Keith, *supra,* merely holds that under the common law a railroad company is only required to furnish a sufficient depot upon its own lines with sufficient facilities for the business at any City. The plaintiff is not asking that the L. & N. have any other depot than the Bourbon Stock Yards, nor should it be forgotten that the Keith case was decided upon the common law, as was the Butchers' and Drovers' Stock Yards Company case; as this case is purely and simply a
241 *switching case under the* 213 *section of the Constitution,* those cases cannot be said to be in conflict with the conclusion heretofore reached.

It was strenuously contended for the defendant that in the case of L. & N. R. R. Co. *vs.* Commonwealth, 22 Ky., L. K. 328, the constitutional provisional provision invoked herein was construed, and that the same is in harmony with the Keith case and the Butchers' and Drovers' case, *supra.* It is plain, however that that case was solely and exclusively a *rate case* and required a construction of section 215 of the Constitution under which the indictment was found. It is true that in that case the Court of Appeals held that the iron-bound rule as determined by section 214 of the Constitution was modified by the qualifying words *"Upon the same conditions"* con-

tained in Section 215 of the Constitution but we may search each and every section of the Constitution and nowhere will there be found any qualifying words or limitation clause upon the mandatory requirements as contained in section 213 and a most careful
242 analysis of the majority opinion in that case will show conclusively that it is not applicable as an authority to this case.

In brief the question is, shall a common carrier acquiring its existence and powers from the State be required to obey a Constitution of the State? In none of the cases relied upon by defendant, was this the question for decision. All of those cases were tried under the Common law as applicable to carriers. It must be admitted that the State has the power to compel its railroad corporations to exchange freight with each other. It can even require the carrier to deliver live-stock at every stock-yard in its line but it has not done so. If there had been such a Constitutional provision in Kentucky and Tennessee, it is clear that the Covington Stock Yards case and the Nashville Stock Yards case would have been decided in favor of the Stock Yards. If the statute may go so far as to alter, amend and even repeal the charter of a railroad company, it certainly has the power of imposing a mere regulation as to the for-
243 warding of freight. And the State having in its Constitution expressly required the defendant to receive and exchange cars from and with other roads, it is perfectly plain that the "stock yard" cases, decided upon common law principles are not at all applicable to this case. This is not a "stock yard" case under the common law, but "switching" case under the Constitution.

3. Can mere inconvenience and a moderate expense, excuse defendant from exchanging cars with other roads."

The testimony for the defendant shows that the distance from the South Louisville break up yards of the Louisville & Nashville Railroad Company to a point of physical connection between its tracks and those of the Southern Railway Company at Seventh and Magnolia is about one and one half miles. It further appears that the distance from the point of physical connection between the roads at Seventh and Magnolia to the Central Stock Yards is about one and one half miles, the two making a total distance from the Louisville and Nashville Railroad company's South Louisville break-up
244 yards via 7th and Magnolia physical connection with the Southern Railway Company to the Central Stock Yards, of three miles, which is not quite half the distance between the said South Louisville break-up yards of the Louisville & Nashville Railroad Company and the Bourbon Stockyards.

It also appears from the testimony of W. A. Evans, who was for twenty three years Yard-master of the Bourbon Stock Yards, that if the Louisville and Nashville Railroad Company is required to handle live-stock from its South Louisville break-up yards to the Central Stock Yards in the same manner that said road handled stock to the Bourbon Stock Yards, a distance of about five miles in transportation of live-stock is saved.

It is contended by plaintiff that where a common carrier is required to do a specific thing by a mandatory constitutional provision

or legislative enactment the question of inconvenience is put at rest by such requirements and the act must be done.

245 It is a conceded fact in this case that the 7th and Magnolia Streets connection is a physical connection between the tracks of the two railroad systems, and this is more than corroborated by the positive testimony as contained in the affidavits of B. H. Young and B. S. Josselyn.

Furthermore, it appears that live stock can be delivered promptly and regularly from the South Louisville break-up yards of said Louisville & Nashville Railroad Company immediately to said Magnolia Street connection with the Southern Railway. In his affidavit, the president of the defendant says:—

"If cars of live stock are to be delivered promptly and regularly from the L. & N. Yards at South Louisville immediately to the said Magnolia Street track without going first to the Oak Street Yards of the L. & N. R. Co., it will practically require the service of another switch engine and crew to do this work."

246 In the case of C. & N. W. Ry. Co., *vs.* The People, 56 Ill., 376, the same question of additional expense was raised as an excuse for not making immediate delivery of grain, and in response to the contention the Supreme Court of Illinois said:—

"It also admits its use, and the only allegation made in the return for the purpose of showing any difficulty in delivering to relators' elevator, the grain consigned thereto from the Wisconsin & Milwaukee divisions, is, that those divisions connect with the line on West Watter Street only by a single track, and that respondent can not deliver bulk grain or other freight to the elevator of relators even from those divisions, *without large additional expense caused by the loss of the use of motive power labor of servants, and loss of use of cars,* while the same are being delivered and unloaded at said elevator and brought back. *As a reason for non delivery on the ground of difficulty, this is simply frivolous.*"

247 Section 216 of the Constitution provides for mere physical connection where it is *reasonable or feasible,* but does not provide for interchange of business. But after such connection is made the question of reasonableness and feasibility is ended, and the matter of interchange of business is relegated to section 213 where the interchange is required.

This interchange is to be done in the usual and customary way—which is by the transfer and delivery of empty or loaded cars coming to or going from the connection roads. The commerce of the country would not tolerate the system which required the unloading and reloading of live stock or even dead freight at connecting points (Peoria *vs.* Chicago, &c., 109 Ill., 135). The framers of the Constitution were aware of this, hence the broad and comprehensive language of section 213 which in effect provides for such interchange of business in the customary way. See in this connection Jackson, &c., *vs.* Wis., &c., 40 L. R. A., 392.

If we look at the case as one in which the convenience of the

Louisville and Nashville Railroad is to be taken into the ac-
248 count still, there is no reason why delivery of live stock at this 7th and Magnolia Connection may not be required when the Stock comes from the L. & N. to the Southern, as confessedly every day such stock bound for the Northern market is delivered by the Southern to the L. & N. at such connection.

It takes a shorter time to make the delivery from the break up yards of the L. & N. to this connection with the Southern than it does to make it to the switch leading to the Bourbon Yards, and the same switching and delay occurs at either connection or switch, the distance being greatly to the advantage of the Seventh and Magnolia connection.

There is no issue in the case as to the rate for freight carried. The defendant gets its full rate to Louisville and its charge for additional use of its cars is compensated for by the reciprocal interchange of cars or by the usual trackage contract in force between railways using each others cars.

No difficulties of this kind are suggested by defendants and
249 the refusal shown by the circular letter of the defendant is not placed on this ground.

The refusal is based on the plea of inconvenience, and this, if allowed to prevent the delivery to the Southern Road at this point of connection will be sufficient to prevent interchange of business at most, if not all connecting *or* carriers as such transfer of cars is always attended with some inconvenience. This inconvenience, however, is insignificant as compared with the necessities of commerce which requires the interchange of cars at all points of physical connection between railways.

Of course, the Constitution does not require impossibilities, but here the interchange is shown to be both possible and practicable. Indeed, it is being constantly made in other kinds of freight—the defendant declining only to receive cars loaded with live-stock destined to plaintiff's yards.

I am of opinion that plaintiff's motion for an injunction ought to be sustained and it will be so ordered.

SHACKELFORD MILLER, *Judge.*

Nov. 23, 1901.

250 Thereupon on the 23rd day of November, 1901, the following bond was executed and filed in the Clerk's office:

Jefferson Circuit Court, Chancery Division.

COMMONWEALTH OF KENTUCKY, *Jefferson County:*

30269.

THE CENTRAL STOCK YARDS CO., Plaintiff,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Injunction Bond.

We undertake that the plaintiff, The Central Stock Yards Company shall pay to the defendant The Louisville and Nashville Railroad Company the damages not exceeding Ten Thousand ($10,000.00) Dollars, which it may sustain by reason of the injunction in this action, if it is finally decided that said injunction ought not to have been granted.

CENTRAL STOCK YARDS COMPANY,
By B. H. HURT, *President,*
THE AETNA INDEMNITY COMPANY,
251 By ALEXANDER GILMOUR,
Attorney in Fact. [SEAL.]

Attest:
JOHN H. PAGE, *Clerk,*
By H. A. LINDSAY, *D. C.*

252 STATE OF KENTUCKY, *County of Jefferson, sct:*

I, John H. Page, Clerk of the Jefferson Circuit Court, in and for the County and State aforenamed, do hereby certify that the foregoing 251 pages contain a full, true and complete transcript of the record and proceedings in the case wherein the Central Stock Yards Company is plaintiff and the Louisville and Nashville Railroad Company is defendant, # 30269, an action lately pending in the aforesaid Court, Chancery Division, as the same appears of record and now on file in my said office.

Witness my hand, as aforesaid, this 3rd day of December, 1901.

JNO. H. PAGE,
Clerk of the Jefferson Circuit Court.

253 STATE OF KENTUCKY, *County of Jefferson:*

30269.

Pleas before his Honor, Shackelford Miller, Judge of the Jefferson Circuit Court, Chancery Branch, First Division, at the Court House in the City of Louisville, County and State aforenamed and on dates hereinafter mentioned.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Transcript of Record.

At a Court held on the 9th day of December, 1901:

Came plaintiff, by counsel, and filed the affidavits of R. C.
254 Watkins, Robert Pitt, V. B. Nuckols, John McCampbell and J. E. Miller herein.

And on motion of plaintiff, by counsel, ordered that a rule be and is awarded against the defendant returnable the 10th inst., to show cause why it should not be punished for disregarding the order of injunction granted herein on November 23rd, 1901.

Said affidavits and exhibits filed herein on the 9th day of December, 1901, are as follows, to-wit:

Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of R. C. Watkins.

255 Affiant, R. C. Watkins, states that he is Vice President and Traffic Manager of the Plaintiff, Central Stock Yards Company, and that he has carefully read the affidavits of Robert Pitt, V. B. Nuckols, John McCampbell and J. E. Miller, and known that the livestock mentioned in said affidavits was consigned to plaintiff's stock yards and not delivered at said yards.

He further says that the Central Stock Yards Company had an interest in having the said stock delivered as directed by the owners thereof, in that its business is that of the operation of a stock yards plant, and especially is provided with appliances for safely loading and unloading livestocks, caring for, watering and feeding the same, for all of which services so rendered by the Central Stock Yards Company for the owners of any and all stock charges are made and therein and thereby the business of plaintiff is maintained and made dependent thereon.

He further says that he has likewise carefully read the
256 order of injunction entered by this Honorable Court on November 23, 1901 and that he likewise known that the defendant, Louisville & Nashville Railroad Company, did on November 26, 1901, three days after the entry of this order, and to the best of his knowledge and belief did not, before late in the evening or night of November 26, 1901, issue any circular purporting to comply with the said order of injunction, and he files herewith as a part hereof a copy of the said circular so issued by the defendant, Louisville & Nashville Railroad Company, dated November 26, 1901, and states that he is informed and believes that the said circular does not conform to the order of injunction; and he knows that in the respects set forth in the affidavits hereinbefore referred to the directions, orders and commands of this Honorable Court by the said order of injunction were persistently disobeyed, and for and in the interest of the plaintiff, Central Stock Yards Company, and all persons doing business thereat he asks that this Honorable Court issue a rule against
the defendant, Louisville & Nashville Railroad Company, re-
257 turnable at a date to be fixed by the Court, to show cause why defendant should not be punished for its contemptuous disregard of the order of injunction herein.

Affiant further says that as Traffic Manager of the plaintiff, he has had numerous complaints from commission merchants doing business at plaintiff's yards, and shippers and dealers in livestock, that at many of the established stations of the defendant in Kentucky the agents of defendant thereat report that they have never received the circular hereinbefore referred to, or any instructions respecting the receipt, billing and transportation of livestock to plaintiff Company's plant, as directed in the order of injunction herein, and that he has also received complaints from shippers and commission men located and doing business as said Central Stock Yards that the said Louisville & Nashville Railroad Company's agents at various stations throughout the State of Kentucky are using their best endeavors to dissuade shippers from billing their livestock to
plaintiff's yards, and falsely representing that excessive
258 switching charges are made for delivery of livestock consigned to plaintiff's yards.

R. C. WATKINS.

Subscribed and sworn to, before me, by R. C. Watkins, this 9th day of December, 1901.

My commission expires the 12th day of January, 1901.

CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

259 Louisville & Nashville Railroad Company.

Office of the Central Freight Agent.

Circular N. S. No. —.

(Supplementing Circular N. S. No. 1175.)

LOUISVILLE, KY., *November* 26, 1901.

Delivery of Live Stock at Louisville, Kentucky.

Until further order, agents will, when so requested by a shipper, receive and bill live stock consigned to Southern Railway for Central Stock Yards, or consigned to Central Stock Yards at Central Stock Yards, Ky.

This circular is issued pursuant to a temporary injunction of a circuit court, which this company will seek to have immediately dissolved, but which is to be observed until dissolved.

D. M. GOODWYN,
General Freight Agent.

File 125844.

260 Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of Robert Pitt.

Affiant, Robert Pitt, being duly sworn says that he is a citizen and resident of the State of Tennessee, and is now and has been for some time past engaged in the business of buying, raising and dealing in livestock and marketing the same in Kentucky markets, and that on Saturday, December 7, 1901, at Danville, Tennessee, a regularly established station on the line of the defendant, Louisville & Nashville Railroad Company, he tendered to the agent and employés at said station of the Louisville & Nashville Railroad Company two cars of cattle which were received and loaded respectively in L. & N. car No. 19614, and L. & N. car No. 19501, and the said stock were
261 billed to himself, Robert Pitt, at Louisville, Kentucky, care Central Stock Yards, and were transported over the line of the Louisville & Nashville Railroad Company, to Louisville, Ky., and reached the South Louisville Break-up yards of the Louisville & Nashville Railroad Company at South Louisville at about 10:30 A. M. on Sunday the 8th day of December, 1901.

Affiant further says that contracts for the transportation of the said two cars of livestock were given to him, and signed by him and

by the agent of the Louisville & Nashville Railroad Company at Danville, Tennessee, copies of which said contracts are filed herewith and made a part hereof.

Affiant further says that upon the arrival of the said two cars at the break-up yards of the defendant, Louisville & Nashville Railroad Company, as aforesaid, he demanded of the agent of the said Louisville & Nashville Railroad Company at South Louisville, one John F. Coady, that the said cars, in accordance with his contracts therefrom, be delivered to the Southern Railway Company at one of the
262 points of physical connection between the tracks of the said Louisville & Nashville Railroad Company and the tracks of the said Southern Railway Company for delivery by the said Southern Railway Company at Central Stock Yards where same were made deliverable under the contracts aforesaid, and that the said agent of the said Louisville & Nashville Railroad Company at South Louisville neglected, failed and refused to make delivery of the said stock as per contract and ordered at said Central Stock Yards Company through the Southern Railway Company, as aforesaid, or to make delivery thereof at any other place than the Bourbon Stock Yards.

Affiant further says that he accompanied his two loads of live stock, as hereinbefore mentioned, reaching Louisville by the same train that the said livestock did, and over his protest and objection was delivered and is now in the pens of the Bourbon Stock Yards; that they were loaded in the said cars about 5 o'clock P. M. on Saturday, December 7, and that he visited the pens of the Bourbon Stock Yards this morning for the purpose of inspecting his said cattle, and from such inspection verily believes and charges the
263 fact to be true that the said stock have not been fed or watered since being loaded upon the cars aforesaid, Saturday December 7, 1901, at 5 o'clock P. M. and that, therefore, all of the said stock have been neglected for a period exceeding twenty-eight hours without water or feed, and that he accompanied his said stock and directed that same should be delivered as billed to the Central Stock Yards, Kentucky, at which place he visited for the purpose of having the said stock properly attended to, or seeing that same was done, and the defendant by its wrong in making delivery against the wishes and directions and contract aforesaid, has occasioned him inconvenience and expense, and placed the stock at a stock yards where arrangements had not been made for sale thereof, and it was and is his expectation to have sale thereof made Monday December 9, and by the wrongful acts of the defendant he has been injured and damaged.

ROBT. PITT.

264 Subscribed and sworn to, before me, by Robert Pitt, this 9th day of December, 1901.

My commission expires the 22nd day of March, 1904.

[SEAL.]

H. V. DAVIS,
Notary Public, Jefferson County, Kentucky.

Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of V. B. Nuckols.

Affiant, V. B. Nuckols, being duly sworn says that he is a resident and citizen of Todd county, Kentucky, and that on Saturday
265 December 7, 1901, at Elkton, Kentucky, a regularly established station on the Louisville & Nashville Railroad Company, he tendered to the agent and employer of the said defendant a car load of cattle for shipment, consigned to himself care W. R. Crawford & Company, Central Stock Yards, Louisville, Kentucky; that said livestock was received by the agent of the Louisville & Nashville Railroad Company at said station and loaded in car No. 18987.

Affiant further says that upon the said livestock reaching Louisville he, affiant, turned over to the said W. R. Crawford & Company the bill of lading therefor and himseuf went to the Central Stock Yards Company plant, and that the said defendant Louisville & Nashville Railroad Company, neglected, failed and refused to make delivery of the said livestock, as billed, at Central Stock Yards care W. R. Crawford & Company, but on the contrary made delivery thereof at the Bourbon Stock Yards.

Affiant files herewith and makes a part hereof the contract made and entered into by and between the said defendant and him-
266 self for the shipment of said livestock, and *makes* the same for identity "Contract."

Affiant further says that the agent of defendant at Elkton, Kentucky was plainly told and well knew that affiant wanted his stock to go to the Central Stock Yards Company's plant where W. R. Crawford & Company have their office, and said agent as telegraph operator, sent for affiant a telegram to W. R. Crawford & Company at Central Stock Yards, Kentucky, informing them that the stock had been sent to Central Stock Yards care of W. R. Crawford & Company.

V. B. NUCKOLS,

Subscribed and sworn to, before me, by V. B. Nuckols this 9th day of December 1901. My commission expires the 22nd day of March 1904.

H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

Form 114.—Revised November, 1899.

LOUISVILLE & NASHVILLE RAILROAD COMPANY'S

CONTRACT

FOR THE TRANSPORTATION OF LIVE STOCK OVER ITS OWN LINES.

Elkton Ky Station, Dec. 7th 190 1

This contract entered into at the above time and place between the Louisville & Nashville Railroad Company, hereinafter called the carrier, and ..... hereinafter called the shipper,

WITNESSES, That the carrier will carry live stock at the rates established by it therefor, or, where certain risks, duties, and liabilities are assumed by the shipper, as hereinafter specified, will carry such live stock at greatly reduced rates and (if shipped in car-load quantities) will furnish the shipper or his agent free transportation on the train with said live stock.

In the present instance the shipper elects to avail himself of the said reduced rate and (if shipped in car-load quantities) free passage for himself or his agent on the train with said live stock, and has delivered on the cars of the carrier the following described live stock, to wit:

CONSIGNEE, DESTINATION, &c.	DESCRIPTION OF STOCK	Car Number
T B. Nuckols c/o H R. Crawford & Co. Central Stock Yds. Louisville Ky	31 Cattle	18987

Louisville, Ky.

CHARGES, $.....

The carrier agrees to transport said live stock to destination if on said carrier's line of railroad, otherwise to the place where said live stock is to be received by the next connecting carrier for transportation to or towards destination, and the carrier guarantees that the freight rate thereon from point of shipment to destination shall not exceed the reduced rate of Thirty Five Dollars per Car.

In consideration of all of which the shipper hereby agrees to assume the risks, duties, and liabilities hereinafter specified, and that the transportation shall be upon the following conditions, which are admitted and accepted by said shipper as just and reasonable, viz.:

1. The shipper hereby releases the carrier from all liability in the transportation of said live stock, except as hereinafter agreed, and agrees that such liability shall be only that of a private carrier for hire, and that all liabilty of the carrier shall cease at the station to which such live stock is destined, if its destination be on the carrier's line of railroad, or if destined to a point beyond said carrier's line of railroad, then at said carrier's station, at its terminus, when ready to be delivered to the shipper, consignee, or carrier whose line may constitute a part of the route to destination.

2. The shipper has examined and found in good order and condition the car or cars provided by said carrier for the transportation of said animals, and hereby accepts the same and agrees that they are as thus provided, suitable and sufficient for said purpose; and said shipper will at his own expense provide such bedding or other suitable appliances in said car or cars as will enable said animals to stand securely on their feet while in the same, and said shipper hereby releases said carrier from all liability for and on account of any and all injury or injuries which the said animals, or any of them, may receive in consequence of any or either of them being vicious, wild, unruly, or weak; and in consequence of any of them being killed, or maimed, bruised, or otherwise injured; and in consequence of heat, suffocation, or other ill effects of being crowded in the cars; and in consequence of being injured by the burning of hay, straw, or other material used by the shipper or his agent for feeding or bedding the said animals, or otherwise; and also from all damage or injury or loss which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike, or threatened violence to person or property from any source, and from any injury to track or yards, and from any and all other causes, whether mentioned herein or not, and from the escape of any of said animals, and for loss or damage to said animals from any cause or thing whatever not resulting from the negligence of the agents or servants of said carrier.

3. Said shipper will separate the different kinds of stock in said car or cars by strong partitions, which he will provide at his own expense and risk; and said stock shipped in mixed car-load or car-loads shall be at the entire risk of the shipper on account of any damage that may occur by reason of partitions in said car or cars not being properly made and sufficiently strong to prevent damage to said stock.

4. Said shipper will load and unload said animals at his own risk, and feed, water, and attend the same at his own expense and risk while they are in the stock yards of the carrier awaiting shipment, and while on the cars or at feeding or transfer points, or where they may be unloaded for any purpose.

5. Said shipper will see that said animals are securely placed in the cars furnished, and that the cars are securely and properly fastened doors to prevent the escape of said animals therefrom.

6. The employes of the said carrier shall provide the owner or person in charge of the said animals all proper facilities on trains and at stations for taking care of the same, but the business of the said carrier shall not be delayed by the detention of trains to unload and reload said animals for any cause whatever; but the cars may be left at a station upon the request of the person in charge of the same, and unloaded and reloaded by him to be forwarded by the next freight train if he so directs; and said carrier shall not be held liable for any damage or injury that may occur to said animals during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said animals are kept over at any given point by the said shipper or his agent beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which they may pass while in transit, then this contract shall be held to be voidable, at the option of the said carrier, and in such case such rates of freight may be imposed and collected by said carrier as may be deemed proper, not to exceed local rates from point where received for transportation to such point of detention.

7. In case of accident to or delay of trains, from any cause whatever, the shipper is to feed, water, and take proper care of said animals at his own expense.

8. The shipper or his agent or agents in charge of said animals shall ride on the freight train upon which the said animals are transported.

9. The presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the carrier from all liability on account of wrong delivery, but shall not be held to operate against the rights of the carrier to demand, if it elect, the identification of the party presenting this contract before delivering the said animals to him.

10. Should damage occur for which the said carrier may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed for a stallion or jack $150; for a horse or mule $75; mare and colt together $100; cow and calf together $35; domestic horned animals $30 each; calves, hogs, or sheep $5 each; chickens, ducks and guinea fowl $1.00 per dozen; geese $2.00 per dozen, and turkeys $3.00 per dozen; other animals $5.00 each, which amounts it is agreed are as much as such animals as are herein agreed to be transported are reasonably worth.

11. In case the said carrier shall furnish laborers to assist in loading and unloading said animals, they shall be subject to the orders and deemed employes of said shipper while so assisting.

12. As a condition precedent to the shipper's right to recover any damages for loss or injury to said animals, he will give notice in writing of his claim thereof to the agent of the railroad company or other carrier from whom he receives said animals before said animals are removed from the place of destination above mentioned, or from the place of delivery of the same to said shipper, and before said animals are mingled with other animals.

13. When necessary for said animals to be transported over the line or lines of any other carrier or carriers, to the point of destination, this contract shall, unless otherwise agreed in writing between such other carrier or carriers and the shipper, constitute the contract between the shipper and each of such other carriers respectively for the transportation over so much of its line as said shipment passes over in order to reach destination; and in no event shall one carrier be liable for the transportation of said animals over the line or lines of any other carrier, or liable for the negligence of any other carrier or carriers.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names.

WITNESS: W. L. Reeves Jr.
(To be other than other signer of the contract.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

By H. Goodman, Agent.

J. B. Nuckols

268

Louisville & Nashville Railroad Co.'s

CONTRACT

FOR

Transportation of Live Stock

OVER ITS OWN LINES.

Shipper V. B. Nuckols

From Elkton Ky Station

To Louisville Ky Station

No. of Car 18987

No. of Way-Bill 15

Date dec 7th 1901

No. of Cars Shipped One

RELEASE.

We, the undersigned, in charge of the live stock mentioned in the within contract, in consideration of the free pass given us by the Louisville & Nashville Railroad Company, hereby agree that said company shall not be liable to us for any injury or damage of any kind suffered by us while in charge of said animals.

V B Nuckols

With One Cars, the numbers of which are noted within.

dec 7th 190

PASS ON FREIGHT-TRAINS ONLY.

V. B. Nuckols

Parties in Charge Accompanying Stock.

H. Goodman Agent.

Only names of parties entitled to pass must be entered above, over the signature of the Agent, who must know that the correct names are entered, and draw a pen through the blank spaces.

The Western Union Telegraph Company, Incorporated.

21,000 Offices in America.

Cabel Service to all the World.

267 This Company transmits and delivers messages only on conditions limiting its liability which have been assented to by the sender of the following message.

Errors can be *regarded* against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an Unrepeated Message, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT,
President and General Manager.

Received at 20 L. BA. D. 10 Paid.

ELKTON, KY., *Dec. 7th*, 1901.

W. R. Crawford & Co., Louisville, Ky.

Cent. Stock Yds.

I ship car cattle this evening will see you Monday.

V. N. NUCKOLS.

4.20 P. M.

(Here follows facsimile marked p. 268.)

269 Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. W. McCampbell.

Affiant, J. W. McCampbell, being duly sworn says that he is a member of the livestock and commission firm of Hart, McCampbell & Company, with offices at Central Stock Yards, Central Stock Yards, Kentucky, and that his said firm is regularly engaged in the livestock and commission business, and the purchase and sale of livestock of every character from day to day, and that on Saturday, December 7, 1901, at Gallatin, Tennessee, a regularly established station upon the line of the defendant, Louisville & Nashville Railroad Company, certain customers of his said firm, namely: Holder & Brown, tendered to the agents and employés thereat of the defendant
a car load of hogs which were loaded in N. C. & St. L. Car
270 No. 9040, and billed to Central Stock Yards, Kentucky, care of his said commission firm, Hart, McCampbell & Company, via Southern Railway Company in Louisville, and that when the said car load of hogs reached Louisville the defendant, Louisville & Nashville Railroad Company, neglected, failed and refused to make delivery thereof as billed, but wrongfully made delivery thereof at the Bourbon Stock Yards.

Affiant says that his said firm has customers and patrons throughout the country who are raisers, dealers, and handlers of livestock, and that the wrongful act of the defendant, Louisville & Nashville Railroad Company, is a continuous wrong to affiant's said firm and will inevitably disorganize his business arrangements and agencies for the handling of stock, and that after learning that the said car load of hogs had been shipped to his said firm, as aforesaid, by Holder & Brown, he inquired of the said Holder & Brown how the said stock had been billed, or shipped, and in response to his said firm's inquiry his said firm received a telegram as follows:

271 "DECEMBER, 8, 1901.

"Gallatin, Tenn., 8.

Hart McCampbell, Louisville, Ky.:

Both cars hogs shipped direct Central cars Southern demand them.
(Signed) HOLDER & BROWN."

Affiant files herewith and makes a part hereof said telegram, and further says that one of the cars referred to in the said telegram was billed to Central Stock Yards, cars Stewart, Sanders, Miller & Company, and referred to in the affidavit of J. E. Miller, is mentioned in the said telegram, and the other is the one consigned to his said commission firm, and that in accordance with the directions of the shippers of the said stock he did demand of the Louisville & Nashville

Railroad Company that it make delivery of the said livestock, as ordered by the shipper and billed to the Southern Railway
272 Company for delivery by the Southern Railway Company, to the Central Stock Yards Company in care of affiant's commission firm, and that the defendant, Louisville Railroad Company, neglected, failed and refused to make delivery thereof as billed to the great injury of affiant's commission firm and the general business at the Central Stock Yards Company's plant.

J. W. McCAMPBELL.

Subscribed and sworn to before me, by J. W. McCampbell, this 9th day of December, 1901.

My commission expires the 22nd day of March, 1904.

H. V. DAVIS,
Notary Public, Jefferson Co., Ky.

The Western Union Telegraph Company, Incorporated.

21,000 Offices in America.

Cab*el* Service to all the World.

This Company transmits and delivers messages only on
273 conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an Unrepeated Message, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT,
President and General Manager.

Number	Sent by	Recd. By	Check	1371
46 N.	Sa	Dr.	10 paid	

Received at Louisville, Ky., 501 P. M. Standard Time. Dec. 8, 1901.

Board of Trade Building N. W. Cor. 3d and Main Sts. (open at all hours) Telephones, 318, 682, 1162, 1266, 1586.

Dated GALLATIN, TENN. 8.

To Hart McCampbell, Louisville, Ky.:

274 Both Cars hogs shipped direct Central Care Southern demand them.

HOLDER AND BROWN.

Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. E. Miller.

Affiant, J. E. Miller, being duly sworn says that he is a member of the commission firm of Stewart, Sanders, Miller & Company, with offices at the Central Stock Yards Company at Central Stock Yards, Kentucky; that his said commission firm is extensively engaged in buying and selling for others livestock of every character, and that on December 7, 1901, certain customers and patrons of his
275 said commission firm, namely, Holder & Brown, at Gallatin, Tennessee, a regularly established station on the line of the Louisville & Nashville Railroad Company, tendered to the agent and employés of said Louisville & Nashville Railroad Company, at said station a car load of hogs, which said hogs were received by the agent of the Louisville & Nashville Railroad Company and placed in L. & N. Car No. 18640, and that by the directions of the said Holder & Brown, as consignors, the said car load of hogs was shipped to Stewart, Sanders, Miller & Company at Central Stock Yards, Central Stock Yards, Kentucky, Care Southern Railway Company in Kentucky, and that when the said car load of hogs reached the City of Louisville the defendant, Louisville & Nashville Railroad Company, neglected, failed and refused to make delivery of the said livestock as consigned, or to any other point than at the Bourbon Stock Yards, where delivery thereof was made, and the said hogs now remain.

Affiant further says that upon learning from the ship-
276 pers Holder & Brown, of their consignment of said car load of hogs, as aforesaid, and of the wrongful delivery of the said car load of hogs at the Bourbon Stock Yards by the defendant he immediately went to the Bourbon Stock Yards and insisted upon having the said car load of hogs deliverd as billed to the Southern Railway Company for delivery by the said Southern Railway Company at Central Stock Yards, and having had his said request and demand refused he thereupon tendered at East Louisville, a regularly established station on the lines of the Louisville & Nashville Railroad Company, the said car load of hogs for shipment to his commission firm care Central Stock Yards at Central Stock Yards, Kentucky, for delivery to the Southern Railway Company and delivery thereof by said Southern Railway Company at said station, but that the agent at East Louisville of the said Louisville & Nashville Railroad Company, neglected, failed and refused to receive, bill, transfer, or handle the said car load of hogs in any respect whatsoever.

Affiant further says that on December 7, 1901, at Cumber-
277 land Furnace, Tennessee, at a regularly established station on the line of the Louisville & Nashville Railroad Company, one W. A. Bell tendered to, and at the same time one M. H. Cunningham at the same place tendered to the Louisville & Nashville

Railroad Company the one a car load of hogs and cattle, which were loaded in L. & N. car No. 18782, and the other a car load of cattle, loaded in L. & N. Car No. 18543, and requested that the said livestock be billed to the Central Stock Yards, via Southern Railway Company in Louisville, Care Steward, Sanders, Miller & Company, but that the agent of the defendant, neglected, failed and refused to bill the said livestock, or any part of it, to Central Stock Yards, Central Stock Yards, Kentucky, via Southern Railway Company, but received and billed the said stock to Louisville, Kentucky, care Stewart, Sanders, Miller & Company, and all of said livestock were delivered to the Bourbon Stock Yards, and not to the Central Stock Yards where the offices of affiant's commission firm is known to exist, and that affiant thereupon, learning of the refusal of the de-
278 fendant to make delivery to his said commission firm at Central Stock Yards, and of the delivery of said livestock at the Bourbon Stock Yards, called at the Bourbon Stock Yards and ascertained the exact number of catle in the one car, and hogs and cattle in the other, and tendered the said two car loads of livestock to the agent of the Louisville & Nashville Railroad Company at East Louisville, for shipment from said point, which is a regularly established station on the Louisville & Nashville Railroad Company, to affiant's commission firm aforesaid at Central Stock Yards, Kentucky, a regularly established station on the line of the Southern Railway Company, and in care of the Southern Railway Company for delivery by said Company to Central Stock Yards, and that the said agent neglected, failed and refused to receive, bill, transport, or handle the said livestock, or any part thereof, and the same now remains at the Bourbon Stock Yards.

Affiant further says that after the wrongful delivery of
279 the said stock by the Louisville & Nashville Railroad Company at the Bourbon Stock Yards and failure and refusal to deliver the said stock as ordered, care Stewart, Sanders, Miller & Company, this affiant for his said firm obtained the permission and consent of the shippers of said stock to have the same removed from the Bourbon Stock Yards to the Central Stock Yards for sale by affiant's firm, and in pursuance to this offer the said stock was tendered for shipment to affiant's said firm at Central Stock Yards, as aforesaid and the failure and refusal of the Louisville & Nashville Railroad Company in the first instance to make delivery, and the further refusal to receive and transport the stock to his firm at Central Stock Yards, has occasioned the loss of the handling of said stock to his said firm, and greatly damaged him, and has created, and will continue to create discord and disrupt the existing business relations between his said commission firm and livestock
280 raisers, dealers and shippers throughout the country.

J. E. MILLER.

Subscribed and sworn to, before me, by J. E. Miller, this 9th day of December, 1901.

My commission expires the 22nd day of March, 1904.

[SEAL.] H. V. DAVIS,

Notary Public, Jefferson County, Kentucky.

281 At a Court held on the 10th day of December, 1901.

On motion of defendant, by counsel, ordered that this action be and it is postponed to the 11th inst.

Thereupon on the 10th day of December, 1901, the following order was filed in the Clerk's office:

Kentucky Court of Appeals.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD CO., Defendant.

After reading the record, evidence and authorities cited, and considered the very able arguments both oral and written of
282 counsel upon the motion of the Louisville and Nashville Railroad Company, to dissolve the mandatory injunction granted in this case on the 23rd of November last by the Judge of the Chancery Division of the Jefferson Circuit Court, I have concluded that the motion should be overruled, and it is so ordered.

As the Circuit Judge has written a very full opinion and the case will probably come before the Court of Appeals for final judgment in a short time, I deem it unnecessary to write out the grounds of my conclusions as to the temporary injunction now before me.

A. R. BURNAM,
Judge of the Court of Appeals.

At a Court held on the 11th day of December, 1901:

Came the defendant by counsel and filed its response to the
283 rule herein against it and seven exhibits therewith.

And this action having been heard on the sufficiency of the response of the defendant, Louisville and Nashville Railroad Company, to a rule against it to show cause why it should not be punished for contempt in disobeying the order of injunction entered herein on November 23rd, 1901, and the Court having heard the said response and affidavits in support of the motion for the rule, and arguments on the sufficiency of said response.

It is ordered and adjudged that said response is insufficient, and that the said Louisville and Nashville Railroad Company has violated the said injunction and, it is therefore,

Ordered that the defendant Louisville and Nashville Railroad Company be and it is fined for said contempt the sum of $10.00, and it is further ordered that the said defendant, Louisville and Nashville Railroad Company pay the costs of the rule herein; to all of
284 which the defendant the Louisville and Nashville Railroad Co. excepts.

Ordered that the Commonwealth of Kentucky recover of the Louisville and Nashville Railroad Company the sum of Ten Dollars and may have capias pro fine.

Ordered that plaintiff recover of defendant its costs on said rule and may have execution.

Said response and exhibits filed herein on the 11th day of December, 1901, are as follows, to-wit:

285 Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

The Louisville & Nashville Railroad Company for response to the rule issued against it herein on December 9th, 1901 says:

1. As to the circular issued by defendant to its agents on November 26th, 1901 and referred to in the affidavit of R. C. Watkins it is true that defendant did not prior to that date and subsequent to the entry of the order of injunction issue any circular letter to its agents giving instructions as to the handling of livestock, but it had previously instructed its agents in Kentucky that they would bill live-
stock to Louisville in care of the Central Stock Yards, and it
286 did immediately upon the entry of said order of injunction notify its Louisville Superintendent and the Superintendent of its two divisions entering Louisville, one from the South and one from the east, to deliver to the Southern Railway for the Central Stock Yards such live stock when thus billed. And defendant thought that this would accomplish the purpose of plaintiff and secure obedience to the order of injunction.

When plaintiff however complained, as its subsequently did, that it thought this was not complying strictly with the order of Court, defendant then issued the circular letter of instruction referred to in the affidavit of said Watkins; and on the same day upon which it was issued counsel for the defendant telephoned the exact contents of that circular to Counsel for the Plaintiff, and did early the next morning, to-wit, November 27th, 1901, give him an exact copy of the same. And no objection whatever was made to the form thereof.
And defendant further says that there has been no failure,
287 as it understands the order of the Court herein, to comply with said order except possibly in one case which was the result of a mistake, and which defendant attempted to correct as soon as the mistake was discovered as will be hereinafter explained.

2. Of the various car-loads of stock referred to in the several affidavits filed by plaintiff as the basis of the rule issued herein, but one of them was received by this defendant at a station in Kentucky. All of the others were received outside of Kentucky, and their transportation constituted interstate commerce. The one car load which was received in Kentucky is the carload mentioned in the affidavit of V. B. Nuckols, which was received at Elkton, Ky., on December 7th, 1901, and was loaded in car No. 18987.

Defendant does not know what shipping directions were given by the shipper of said stock to the agent at Elkton, except so far as is
shown by the way bill for said stock and by the affidavit of
288 the said Nuckols. When the said stock reached Louisville it was accompanied simply by a conductor's live stock way-bill,

which is filed herewith marked exhibit A, and also a conductor's memorandum way-bill filed herewith as exhibit B. Each of said documents showed the destination of said stock to be simply "Louisville, Ky.," and defendant's agents at Louisville delivered said stock accordingly at defendant's live stock depot in Louisville, to-wit, at the Bourbon Stock Yards.

Subsequently a more elaborate way-bill followed said cars, which way-bill is filed herewith as exhibit C, and which showed the consignee and destination of said stock as follows: "V. B. Nuckols c/o W. R. Crawford & Company Central Stock Yards, Louisville, Kentucky." One of defendant's Louisville agents also telegraphed to the agent at Elkton for information as to said car-load of stock, and received from him the following response to-wit:

"L. & N. 18982 (should be 18987) covered by my W. B. 44, Dec. 7th, V. B. Nuckols consignor, billed to V. B. Nuckols,
289 care Central Stock Yards, Lou. Ky."

Immediately upon receipt of information as to the origin and destination of the stock, defendant by one of its Louisville agents hunted up the said Nuckols, who was the owner of the said stock, and found him by nine o'clock Monday morning, December 9th, and then explained to him how the stock came to be delivered at the Bourbon Stock Yards, and offered to transfer it to the Central Stock Yards but he replied that he had already sold a large part of said stock at the Bourbon Stock Yards and did not care to have any of it sent to the Central Stock Yards. Accordingly no effort of course was made to do so.

3. As to the two car loads of live stock shipped by Robert Pitt, and referred to in his affidavit, and which were loaded in L. & N. Cars 19614 and 19501, defendant says that these cars were received by it in the State of Tennessee for transportation to Louisville, Ky., and the transportation of said cars constituted interestate commerce, and it did not contract to deliver said cars at Central Stock
290 Yards Kentucky, but simply contracted, as the live stock contract filed by said Pitt shows, to deliver same at Louisville, Ky. The said contract describes said Robert Pitt as both the consignor and the consignee of said stock, and fixes Louisville Ky., as the destination of said stock, and the words therein, towit, "care Central Stock Yards" simply indicate that the Central Stock Yards were to be notified of the arrival of said stock, it being a very common custom both in the shipment of live stock and in the shipment of dead freight to ship the same to a certain destination to a particular consignee in the care of some third person, and in such cases it is the custom to notify the person in whose care stock is thus shipped of the arrival thereof.

But defendant says that the order of injunction herein does not require it to contract to deliver stock received outside of Kentucky to any one at Central Stock Yards, Kentucky or to the South-
291 ern Railway for delivery at Central Stock Yards, Ky., but as to stock received outside of Kentucky, only required this defendant to deliver to the Southern Railway live stock or other freight consigned to the station Central Stockyards, Ky.

And defendant says that neither the live stock of said Pitt, nor

any other live stock which it has received since the order of injunction herein coming from points outside of Kentucky, has been consigned to the station Central Stock Yards, Ky.

4. As to the live stock referred to in the affidavit of J. W. McCampbell being stock loaded in N. C. & St. L. car No. 9040, defendant says this was stock belonging to Holder, Brown and Moore, and was received by defendant in the State of Tennessee for shipment to Louisville, Ky. to Holder, Brown & Moore as consignees thereof.

Defendant files herewith marked Exhibit D a copy of the contract entered into between it and said Holder, Brown & Moore for
292 the transportation of said live stock, from which it appears, and it is true that defendant simply agreed to transport the same to Louisville, Ky., said contract named Holder, Brown & Moore as the consignees; the full description in the said contract of the consignee and destination being as follows, to-wit:

"Holder, Brown & Moore, care Hunt McCampbell & Company, Louisville, Ky., care Central Stock Yards."

Defendant submits that it was not required by the said order of injunction to deliver said stock to the Southern Railway.

5. As to the live stock loaded in L. & N. car #18640, mentioned in the affidavit of J. E. Miller, defendant says this stock was received by it at Gallatin, in the State of Tennessee for shipment to Louisville, Kentucky, and that it was not consigned to Central Stock Yards, Kentucky, and defendant did not contract to deliver the same to Central Stock Yards, Kentucky, either by itself or through any connecting carrier.

293 Defendant has not yet received the contract which it executed when said stock was received by it, but has received the way bill for same, and it presumes the way-bill is in the same form as the contract. Said way-bill is filed herewith as part hereof marked "Exhibit E" and described Holder Brown Company as both consignor and consignee of said stock, and described Louisville, Kentucky, as the destination thereof. Under the words "Consignee and destination" on the way bill are the following entries, to-wit, "Holder Brown Company, care of Stewart, Sanders Miller & Co., Louisville, Kentucky, care of Southern Ry."

The other two car loads of stock referred to by said Miller in his affidavit, to-wit, stock in L. & N. car #18,782, and that in L. & N. car #18,543, *these* were delivered to and received by it in the State of Tennessee, at Cumberland Furnace. Defendant has not received at this City the contract executed by its agent in Tennessee nor a copy thereof, but has received only the way-bills which ac-
294 companied said stock, and which it presumes follow the terms of the contract. Said way-bills are filed herewith, marked respectively, "Exhibit F" and "Exhibit G."

The way-bill of car #18,782 (Exhibit F) describes Louisville, Kentucky as the destination of said stock, and under the words on said way-bill, to-wit: "Consignee and destination" are written W. A. Bill, care of Stewart Sanders Miller & Company, Do." The word "Do." is an abbreviation of Ditto, and means that the destination is the same as given in the headlines of the way-bill, which is Louisville, Kentucky.

The way-bill of car #18543 (Exhibit G) shows Louisville Kentucky as the destination of said car-load of stock. Under the words "Consignee and destination" are written: M. H. Cunningham, care of Stewart, Miller & Company, Do." Said word "Do" means, as heretofore explained, Ditto, and means that the destination is the same as that given in the head-lines of the way-bill, which is Louisville, Kentucky.

295 Defendant says that none of said car-loads of stock referred to in the affidavit of said Miller were consigned to the station Central Stock Yards, Kentucky, nor to any one at said Station; and it was not required by the order of injunction heretofore entered, to deliver said cars to the Southern Railway for delivery at said Station.

As to the statement in the affidavit of said Miller that he tendered said live-stock to the Louisville & Nashville Railroad Company at its station called East Louisville, in the City of Louisville, for shipment from said point to said Miller's commission firm at Central Stock Yards, Kentucky defendant says the said station, East Louisville is not a station at which it receives livestock. Its livestock depot in the City of Louisville is at the Bourbon Stock Yards.

But furthermore defendant says it has not understood the order of injunction entered by this Court to mean that it shall receive live stock either at East Louisville or at the Bourbon Stock Yards in the City of Louisville to be merely transferred by it, in the capacity of a transfer Company in the City of Louisville, to the Southern

296 Railway, but has understood said order to apply only to live stock which had been hauled, or was to be hauled by it, not as a mere transfer company in the City of Louisville, but as a railroad Company entering the City of Louisville and engaged in the business of bringing live stock to the City of Louisville.

Defendant says it has very extensive terminal properties in the City of Louisville, including the live stock depot heretofore mentioned, and many tracks, including side tracks and switches reaching into the different parts of the City, and which costs it a very great sum of money, and all of which it has acquired merely as accessories to its business of a railroad Company carrying freight and passengers into and out of the City of Louisville; and which were acquired as a means of bringing such business to itself, because the ownership of convenient terminal facilities attracts business to a railroad Company and enables it to get such business, and to

297 get the compensation and profit which comes from hauling freight and passengers in its regular capacity of a railroad Company entering the City, and enables it to haul such traffic with greater facility and with greater profit.

But to require defendant to receive live stock at East Louisville, or at the Bourbon Stock Yards and simply to carry the same for a short distance in the City of Louisville, and then deliver it to the Southern Railway, would simply be to require this defendant to act as a transfer company and not in its normal capacity as a railroad company, and would make it a mere convenience or accessory to the Southern Railway, and persons along the line of the Southern Railway.

Defendant says that when it carries live stock from outside of the City of Louisville to the City of Louisville, and delivers the same at the Bourbon Stock Yard, it makes the profit which comes from hauling such stock, and delivers the same at the Bourbon Stock Yards merely as a means of taking care of stock which has thus been hauled. And furthermore when stock has been thus delivered at
the Bourbon Stock Yards, if it is there sold to persons east
298 of the City of Louisville, the defendant, the Louisville &
Nashville Railroad Company has the opportunity of hauling said stock again from the Bourbon Stock Yards to points east and northeast of the City of Louisville, such as Cincinnati, Cleveland, Pittsburg, New York &c., out of which subsequent haul this defendant makes a profit, and a profit to which it is entitled, because it comes as one of the effects or results of the terminal facilities which it has acquired at great cost in the said City. But on the other hand, if the Louisville and Nashville Railroad Company is required simply to receive live stock at its live stock depot in the City of Louisville, and transfer the same simply in the City of Louisville to the Southern Railway, to be then carried to the Central Stock Yards, it is made to act merely as a transfer company in the City of Louisville, independently of any haul of the stock which it has heretofore had,
and places the same in a live stock depot, where if carried
299 eastwardly or northeastwardly of the City of Louisville, it
may and probably will be carried by some other road than by that of this defendant. And the result of all this is that the terminal facilities of the Louisville and Nashville Railroad Company in the City of Louisville are practically turned over to the use and benefit of other railroad Companies than itself, which railroad companies get the profit that is derived from a subsequent haul of the said stock, while the Louisville and Nashville Railroad Company gets nothing but a mere switching charge, a small and merely nominal amount; for the switching which defendant has heretofore done has been done as a mere incident to its main business as a Railroad Company and with the view of attracting business to itself as heretofore explained; and the rate- which it has heretofore fixed for such services have been fixed with this purpose in mind, and are not sufficient to enable defendant to realize any profit out of such switching service as an independent service, nor even to pay the
actual cost of such service; and to require defendant to per-
300 form such services at such rates would be not only to give to
others the use of defendant's property which it has acquired for itself, but to give them the same without compensation.

CHARLES N. BURCH,
GIBSON MARSHALL & GIBSON, AND
HELM, BRUCE & HELM,
Attorneys for Def't L. & N. R. Co.

Walker D. Hines being duly sworn says he is the First Vice President of defendant, the Louisville & Nashville Railroad Company and its Chief Officer now in that State, and that he believes the statements in the foregoing response are true.

WALKER D. HINES.

Subscribed and sworn to before me by Walker D. Hines this 11th day of December, 1901.

My commission expires at the end of the next session of the Kentucky Senate.

HUSTON QUINN,
N. P., J. Co., Ky.

301 EXHIBIT A.

Form 684. (Revised September 17, '96.) No. —.

Louisville and Nashville Railroad Company.

Elkton, Ky., Conductor's Livestock Way-bill.

From ——.
Initial of Car L. & N. R. R.
Number of Car 18789.
Train No. 87.
Transferred at ——.
To Initial —— No. —.
From —— at — M. —— —, 190–.
Destination ——.
To Louisville, Ky.
Via ——.
Contents Cattle.

This Way-Bill MUST accompany the car to the destination given. Conductors are positively prohibited from taking a Car
302 from a Station without a Way-Bill.

If from any cause the Car is left short of destination this Way-Bill must be left with it.

If contents of the Car are transferred to another Car, the Conductor or Agent transferring same must note hereon the Number and Initial of the car to which they are transferred, and name of Station where transfer is made.

The regular Way-Bills for the Car have been forwarded by the Passenger train to the destination given, and Agents are prohibited from forwarding the Car beyond said Station until the regular Way-bills are received and ready to accompany it from that point.

Remarks.

Condition of car if not good —. If left short of destination—.
In case of accident, state cause and nature.

303

....

....

....

Stock Loaded.

At 5 — M. 12–7–1901.
(Must be fed within 28 hours from above day and hour.)
Fed and watered 5 P. M. 12, 7, 1901, at Elkton Station.
Fed and watered — M. —— — 190–
At —— Station.
Fed and watered — M. —— — 190–
At —— Station.

304 SECTION 4386. No railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals are conveyed from one state to another, or the owners or masters of steam, sailing, and other vessels carrying or transporting cattle, sheep, swine or other animals from one state to another shall confine the same in cars, boats, vessels, of any description, for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, for a period of at least five consecutive hours unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are
305 received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated.

SECTION 4387. Animals so unloaded must be properly fed and watered during such rest, by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company, or owners or masters of boats or vessels transporting the same, at the expense of the owner or person in custody thereof; and such company, owners, or masters shall in such case have a lien upon such animals, for food, care and custody furnished; and shall not be liable for any detention of such animals.

SECTION 4388. Any company, owner, or custodian of such
306 animals, who knowingly and willingly fails to comply with the provisions of the two preceding sections, shall for every such failure be liable for, and forfeit and pay, a penalty of not less than one hundred nor more than five hundred dollars. But when the animals are carried in cars, boats, or other vessels, in which they can, and do, have proper food, water, space and opportunity to rest, the provisions with regard to their being unloaded shall not apply.

SECTION 4389. The penalty created by the preceding section shall be recovered by civil action in the name of the United States, in the circuit or district court of the United States holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business; and it shall be the duty of all United States marshals, their deputies and subordinates
307 to prosecute all violations which come to their notice or knowledge.

Conductor's Live Stock Way-bill.

Notice.—Conductors must acquaint themselves with the length of time Live Stock in their charge has been in the cars without food or rest, and if it is beyond a reasonable time, or will be if they pass the next point where the animals can be fed and watered, then they must ask instructions from the Superintendent of the Division. Agents at terminal stations must file this Way-Bill with regular freight manifest, and preserve it for future reference.

Attendants with (—) Cars Mr. —— to be passed in accordance with Rule 53 (amended) in Local Freight Tariff.

308 (E. B.)

Form 1083. Revised December 1890.

Louisville & Nashville Railroad Co.

Conductor's Way-Bill.

12/7, 1901.

L. & N. Car No. 18789.
From Elkton, Ky.
To Louisville, Ky.
Route —.
Contents, Cattle. Fed & watered 5 P. M., 12/7.
Consignee, —— ——.
Transferred at ——.
Into —, car —.
Transferred at —— ——.
Into — car ——.
Regular bill by mail.
Weighed at ——; man in charge.
Gross, —.
Tare, —.
Net, —.
Capacity —.

This Card way-bill Must accompany the car to the destination given.

If from any cause the car is left short of destination, this way-bill must be left with it; and reasons therefor noted on back of this card.

If contents of a car are transferred to another car, the Conductor or Agent transferring same must note hereon the number and initial of the car to which they are transferred, and name of station where transfer is made.

(See other side.)

[Written across the face:] Copy. Stock.

Form 114.—Revised November, 1899.

LOUISVILLE & NASHVILLE RAILROAD COMPANY'S

CONTRACT

FOR THE TRANSPORTATION OF LIVE STOCK OVER ITS OWN LINES.

Gallatin, Tenn. Station, Dec. 7th 190 1

This contract entered into at the above time and place between the Louisville & Nashville Railroad Company, hereinafter called the carrier, and Holder Brown & Moore hereinafter called the shipper,

WITNESSES, That the carrier will carry live stock at the rates established by it therefor, or, where certain risks, duties, and liabilities are assumed by the shipper, as hereinafter specified, will carry such live stock at greatly reduced rates and (if shipped in car-load quantities) will furnish the shipper or his agent free transportation on the train with said live stock.

In the present instance the shipper elects to avail himself of the said reduced rate and (if shipped in car-load quantities) free passage for himself or his agent on the train with said live stock, and has delivered on the cars of the carrier the following described live stock, to wit:

CONSIGNEE, DESTINATION, &c.	DESCRIPTION OF STOCK	Car Number
Holder Brown & Moore Care Hart Mc. Campbell & Co. Louisville, Ky Care Central Stock Yards.	One Car Hogs	J.H.C. 9040
CHARGES, $ 6.64		

Care Central Stock Yards.

CHARGES, $ 6.64

The carrier agrees to transport said live stock to destination if on said carrier's line of railroad, otherwise to the place where said live stock is to be received by the next connecting carrier for transportation to or towards destination, and the carrier guarantees that the freight rate thereon from point of shipment to destination shall not exceed the reduced rate of ..... per Car to Louisville Ky.

In consideration of all of which the shipper hereby agrees to assume the risks, duties, and liabilities hereinafter specified, and that the transportation shall be upon the following conditions, which are admitted and accepted by said shipper as just and reasonable, viz.:

1. The shipper hereby releases the carrier from all liability in the transportation of said live stock, except as hereinafter agreed, and agrees that such liability shall be only that of a private carrier for hire, and that all liabilty of the carrier shall cease at the station to which such live stock is destined, if its destination be on the carrier's line of railroad, or if destined to a point beyond said carrier's line of railroad, then at said carrier's station, at its terminus, when ready to be delivered to the shipper, consignee, or carrier whose line may constitute a part of the route to destination.

2. The shipper has examined and found in good order and condition the car or cars provided by said carrier for the transportation of said animals, and hereby accepts the same and agrees that they are, as thus provided, suitable and sufficient for said purpose: and said shipper will at his own expense provide such bedding or other suitable appliances in said car or cars as will enable said animals to stand securely on their feet while in the same, and said shipper hereby releases said carrier from all liability for and on account of any and all injury or injuries which the said animals, or any of them, may receive in consequence of any or either of them being vicious, wild, unruly, or weak; and in consequence of any of them being killed, or maimed, bruised, or otherwise injured; and in consequence of heat, suffocation, or other ill effects of being crowded in the cars; and in consequence of being injured by the burning of hay, straw, or other material used by the shipper or his agent for feeding or bedding the said animals, or otherwise; and also from all damage or injury or loss which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike, or threatened violence to person or property from any source, and from any injury to track or yards, and from any and all other causes, whether mentioned herein or not, and from the escape of any of said animals, and for loss or damage to said animals from any cause or thing whatever not resulting from the negligence of the agents or servants of said carrier.

3. Said shipper will separate the different kinds of stock in said car or cars by strong partitions, which he will provide at his own expense and risk, and said stock shipped in mixed car-load or car-loads shall be at the entire risk of the shipper on account of any damage that may occur by reason of partitions in said car or cars not being properly made and sufficiently strong to prevent damage to said stock.

4. Said shipper will load and unload said animals at his own risk, and feed, water, and attend the same at his own expense and risk while they are in the stockyards of the carrier awaiting shipment, and while on the cars or at feeding or transfer points, or where they may be unloaded for any purpose.

5. Said shipper will see that said animals are securely placed in the cars furnished, and that the cars are securely and properly fastened so as to prevent the escape of said animals therefrom.

6. The employes of the said carrier shall provide the owner or person in charge of the said animals all proper facilities on trains and at stations for taking care of the same, but the business of the said carrier shall not be delayed by the detention of trains to unload and reload said animals for any cause whatever; but the cars may be left at a station upon the request of the person in charge of the same, and unloaded and reloaded by him to be forwarded by the next freight train if he so directs; and said carrier shall not be held liable for any damage or injury that may occur to said animals during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said animals are kept over at any given point by the said shipper or his agent beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which they may pass while in transit, then this contract shall be held to be voidable, at the option of the said carrier, and in such case such rates of freight may be imposed and collected by said carrier as may be deemed proper, not to exceed local rates from point where received for transportation to such point of detention.

7. In case of accident to or delay of trains, from any cause whatever, the shipper is to feed, water, and take proper care of said animals at his own expense

8. The shipper or his agent or agents in charge of said animals shall ride on the freight train upon which the said animals are transported.

9. The presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the carrier from all liability on account of wrong delivery, but shall not be held to operate against the rights of the carrier to demand, if it elect, the identification of the party presenting this contract before delivering the said animals to him.

10. Should damage occur for which the said carrier may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed for a stallion or jack $150; for a horse or mule $75; mare and colt together $100; cow and calf together $35; domestic horned animals $30 each; calves, hogs, or sheep $5 each; chickens, ducks and guinea fowl $1.00 per dozen; geese $2.00 per dozen, and turkeys $3.00 per dozen; other animals $5.00 each, which amounts it is agreed are as much as such animals as are herein agreed to be transported are reasonably worth.

11. In case the said carrier shall furnish laborers to assist in loading and unloading said animals, they shall be subject to the orders and deemed employes of said shipper while so assisting.

12. As a condition precedent to the shipper's right to recover any damages for loss or injury to said animals, he will give notice in writing of his claim thereof to the agent of the railroad company or other carrier from whom he receives said animals before said animals are removed from the place of destination above mentioned, or from the place of delivery of the same to said shipper, and before said animals are mingled with other animals.

13. When necessary for said animals to be transported over the line or lines of any other carrier or carriers, to the point of destination, this contract shall, unless otherwise agreed in writing between such other carrier or carriers and the shipper, constitute the contract between the shipper and each of such other carriers respectively for the transportation over so much of its line as said shipment passes over in order to reach destination; and in no event shall one carrier be liable for the transportation of said animals over the line or lines of any other carrier, or liable for the negligence of any other carrier or carriers.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names.

WITNESS: Lee T. Allen
(To be other than either signer of the contract.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

By G. M. Hillis Agent.

Holden Brown Ky.

310

37
Ed. "

Louisville & Nashville Railroad Co.'s

CONTRACT

FOR

Transportation of Live Stock

OVER ITS OWN LINES.

Shipper_____

From_____ Station

To_____ Station

No. of Car_____

No. of Way-Bill_____

Date_____ 190__

No. of Cars Shipped_____

RELEASE.

We, the undersigned, in charge of the live stock mentioned in the within contract, in consideration of the free pass given us by the Louisville & Nashville Railroad Company, hereby agree that said company shall not be liable to us for any injury or damage of any kind suffered by us while in charge of said animals.

_____

_____

_____

_____

With_____ Cars, the numbers of which are noted within.

_____ 190__

PASS ON FREIGHT-TRAINS ONLY

_____

_____

_____

_____

Parties in Charge Accompanying Stock.

_____ Agent.

Only names of parties entitled to pass must be entered above, over the signature of the Agent, who must know that the correct names are entered, and draw a pen through the blank spaces.

Form 1131. Revised Nov. 2, '94.

Louisville & Nashville Railroad Co. Line Initial, —. Road Initial, L. & N. Car No. 18987. Marked Capacity —.
W. B. No. 15.

Local Freight Way-bill.

Elkton, Ky., to Louisville, Ky. Date, Dec. 7, 1901.

Transferred into { Initial —. No. —, at ——, 190–.
Initial —. No. —, at ——, 190–.

Weighed at — { Gross... —.
Tare ... —.
Net..... —.

Consignor.	Marks.	Consignee and destination.	Articles.	Weight. Separate.	Weight. Aggregate.	Rate.	Freight.	Charges.	Prepaid.	To be collected.
T. B. Nuckols.....	.....	T. B. Nuckols c/o W. R. Crawford & Co. Central Stock Yards Louisville, Ky.	31 Cattle.....	200	00	.....	35 00	.....	.....	35 00

Copy.

(Here follows facsimile marked p. 310.)

311 (Ex. F.) Form 1131. Revised Nov. 2, '94.

Louisville & Nashville Railroad Co. Line Initial, —. Road Initial, L. & N. Car No. 18782. Marked Capacity —.
W. B. No. 41.

Local Freight Way-bill.

Cumberland Furnace, Tenn., to Louisville. Date 12/7, 1901.

Transferred into { Initial —. No. —, at ——, 190–.
Initial —. No. —, at ——, 190–.

Weighed at 288 { Gross ... 599.
Tare..... 299.
Net..... —.

Consignor.	Marks.	Consignee and destination.	Articles.	Weight. Separate-	Weight. Aggregate.	Rate.	Freight.	Charges.	Prepaid.	To be collected.
W. A. Bill.....	.....	W. A. Bill c/o Stewart Sanders Miller & Co.	1 Car Mixed Stock.	30	000	39 00				
		Do.....	.....	.....	.....	.....	39 00	.....	.....	39 00

312 (Ex. E.) Form 1131. Revised Nov. 2, '94.

Louisville & Nashville Railroad Co. Line Initial, —. Road Initial, L. & N. Car No. 18640. Marked Capacity, —.
W. B. No. 16.

Local Freight Way-bill.

Hartsville, Tenn., to Louisville, Ky. Date, 12/7, 1901.

Transferred into { Initial —. No. —, at ——, 190–.
Initial —. No. —, at ——, 190–.

Weighed at — { Gross... —. Tare ... —. Net ..... —.

Consignor.	Marks.	Consignee and destination.	Articles.	Weight. Separate.	Weight. Aggregate.	Rate.	Freight.	Charges.	Prepaid.	To be collected.
Holder Brown Co..	.....	Holder Brown Co.. c/o Stewart Sanders Miller & Co. Louisville Ky. c/o Southern Ry.	1 Car Hogs.....	.....	20000	.....	7 00 40 00	47 00		
					H B	7 00				
					By cl	40 00				
						47 00				

CENTRAL STOCK YARDS CO.

313 (E. T.) Form 1131. Revised Nov. 2, '94.

Louisville & Nashville Railroad Co. Line Initial —. Road Initial —. Car No. L. & N. Marked Capacity 18543
W. B. No. 32.

Local Freight Way-bill.

Cumberland F'ce, Tenn., to Louisville, Ky. Date 12/7, 1901.

Transferred into { Intial —. No. —, at ——, 190–.
Intial —. No. —, at ——, 190–.

Weighed at — 287 { Gross... 584.
Tare.... 284.
Net..... —.

Consignor.	Marks.	Consignee and destination.	Articles.	Weight. Separate.	Weight. Aggregate.	Rate.	Freight.	Charges.	Prepaid.	To be collected.
M. H. C.....	.....	M. H. Cunningham c/o Stewart Miller & Co.	.....	30	000	34 00				
		Do.....	1 Car Cattle.....	.....	.....	.....	34 00	.....	.....	34 00

Copy.

314 At a Court held on the 19th day of December, 1901:

Came the defendant and upon written notice filed, and in order that it may know in what respect it is considered by the Court to have violated the order of injunction herein, moved the Court to extend the order heretofore entered herein on December 12th, 1901, and to show specifically what acts of defendant complained of in the affidavits filed by plaintiff in support of the rule for contempt are considered by the Court to have been violations of the said order of injunction; to which the plaintiff objects.

Ordered that said motion be and it is assigned to the 24th inst. for hearing.

Said notice filed herein on the 19th day of December, 1901, is missing from the papers and cannot be copied herein.

315 At a Court held on the 23rd day of December, 1901:

On motion of plaintiff, by counsel, and upon the respective affidavits of R. C. Watkins, J. W. Campbell, and A. D. Warren and four exhibits of said affidavits filed, ordered that a rule be and is awarded against the defendant, Louisville and Nashville Railroad Company, returnable the 24th inst., to show cause why it should not be punished for disregarding the order of injunction granted herein on November 23rd, 1901.

Said affidavits and exhibits filed herein on the 23rd day of December, 1901, are as follows, to-wit:

316 Jefferson Circuit Court, Chancery Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. W. McCampbell.

Affiant, J. W. McCampbell, being duly sworn says that he is a member of the livestock commission firm of Hart, McCampbell & Company, with offices at Central Stock Yards, Central Stock Yards, Kentucky, and that his said firm is regularly engaged in the livestock and commission business and the purchase and sale of live stock of every character from day to day, and that on Saturday, December 21, 1901, at Columbia, Tennessee, a regularly established station on the line of the defendant, Louisville & Nashville Railroad Company, certain customers of his said firm, namely, Allen
317 Bros., tendered to the agent and employés at said Station of the defendant a car load of cattle, which were loaded in L. & N. car No. 18726 and billed to Allen Bros., Louisville, Kentucky, cars of Hart, McCampbell & Company.

He further says that before receiving and billing the consignment of stock as stated, his said customers, Allen Bros., demanded of the Louisville & Nashville Railroad Company that said Company receive,

bill, transport, transfer, and deliver the said car load of cattle to the Southern Railway Company at Louisville, at one of the points of physical connection between the tracks of the Southern Railway Company and the tracks of the defendant, Louisville & Nashville Railroad Company, for delivery by the Southern Railway Company at Central Stock Yards, Central Stock Yards, Kentucky, care of affiant's said commission firm, but the defendant, Louisville & Nashville Railroad Company, neglected, failed and refused to so bill the said stock, and would not bill same otherwise than as hereinbefore stated.

318 Affiant further says that the said Allen Bros. immediately, upon receiving the bill of lading for the said car, as aforesaid forwarded same to affiant's said commission firm, and accompanied the said bill of lading by letter advising his said firm that they had shipped the said car load of cattle and made draft in the sum of $500.00 on affiant's said commission firm with bill of lading attached, and further that the defendant, Louisville & Nashville Railroad Company, would not bill the stock otherwise than as billed, and requested affiant's said firm to demand that the car load of cattle shipped should be stopped at and unloaded at Central Stock Yards, which said original letter of the said Allen Bros., is attached hereto and made a part hereof, and that afterwards the said Allen Bros., on December 21, 1901, wired affiant's said commission firm as follows:—

"Shipped you load cattle see that they stop at Central Yards see letter.

"(Signed) ALLEN BROS."

319 Affiant further says that upon receipt of the said letter and telegram and acting upon the instructions of the consignors of said car load of cattle, and acting for his said commission firm, who, by the acceptance of the draft drawn as aforesaid by Allen Bros. with bill of lading attached, acquired an interest in the said cattle, he did, on December 22, 1901, and before the said L. & N. car No. 18726 reached South Louisville and the break-up yards of the Louisville & Nashville Railroad Company, where same would be stopped before making delivery thereof at any place, give written notice and make request in writing of the agent, one J. F. Coady, of the defendant, Louisville & Nashville Railroad Company at South Louisville, Kentucky, to change the destination of the said car load of cattle as billed from Allen Bros. Louisville, Kentucky, care Hart, McCampbell & Company, to Hart, McCampbell Company, at Central Stock Yards, Central Stock Yards, Kentucky, via Southern Railway Company at Louisville, Kentucky, which said directions so given in writing to the said agent of the defend-

320 ant, Louisville & Nashville Railroad Company, changing the destination of the said car load of cattle was in words and figures as follows:

12/22/01.

"Mr. J. F. Coady, Agent, L. & N. R. R. South Louisville, Ky.

DEAR SIR: L. & N. R. R. car 18726 loaded with 30 head cattle from Columbia, Tenn., consigned to Allen Bros., Louisville, Ky., care Hart, McCampbell & Co. Your Agent at Columbia, Tenn., failed to bill to Central Stock Yards, Central Stock Yards, Ky., via Southern Ry. at Louisville and I wish to change the destination of this car from Louisville, Ky., to Central Stock Yards, Ky., and request you to deliver this car to Southern Ry. to be billed to us at Central Stock Yards, Central Stock Yards, Ky. Please attend to this at once, as we must have this car at the Central Stock Yards, Central Stock Yards, Ky.

Yours truly, HART, McCAMPBELL & CO."

321 A true and correct copy of the said letter so delivered to the said agent of the defendant, Louisville & Nashville Railroad Company, and the original telegram referred to hereinbefore are each filed herewith and made parts hereof.

Affiant further says that the said J. F. Coady, as agent of the defendant, Louisville & Nashville Railroad Company, neglected, failed and refused to change the destination of the said car load of cattle as requested, and announced his purpose to, and thereafter did make delivery of the said car load of cattle, not as requested by the owners thereof and consignees thereof, but at the Bourbon Stock Yards, and informed affiant that the defendant, Louisville & Nashville Railroad Company, had, in effect, directed him that any all livestock that should arrive at South Louisville over the lines of the Louisville & Nashville Railroad Company and billed to any person at Louisville, Kentucky, would only be delivered at the Bourbon Stock Yards, and

322 that the defendant, Louisville & Nashville Railroad Company, would continue to refuse to recognize the right or rights of any shipper, owner or consignee of livestock to direct any change in its destination, and that the said defendant, Louisville & Nashville Railroad Company, would continue to fail and refuse to make delivery otherwise than as originally billed, which course of action on the part of the defendant is in violation of the order of injunction herein, and in disregard of the rights of owners of livestock, and of the rights of affiant's said firm as commission merchants, to whom stock is daily consigned for sale, and if such course of action is continued on the part of the defendant, Louisville æ Nashville Railroad Company, his business arrangements and agencies for the handling of livestock will be disorganized and great damage done his said commission firm, and all other livestock commission merchants at Central Stock Yards, and direct damage, will be done to the Central Stock Yards Company.

J. W. McCAMPBELL.

323 Subscribed and sworn to, before me by J. W. McCampbell this the 23rd day of December, 1901. My commission expires the 12th day of January, 1904.

CHARLES JOHANBOEKE,
Notary Public, Jefferson County, Kentucky.

A. D. Warren being duly sworn says that he is a member of the firm of Hart, McCampbell & Company; that he has carefully read the affidavit of J. W. McCampbell, and knows the facts stated therein to be true; and further affiant says that he personally delivered, on December 22, 1901, the instructions to J. F. Coady, directing a change of the destination and point of delivery of L. & N. car No. 18726, as therein mentioned, and that the said J. F. Coady, as agent at South Louisville of the defendant, Louisville & Nashville Railroad Company, told him, this affiant, that he would not change the destination of the said car load of cattle or any cattle so billed to
324 Louisville, and would not deliver the same to the Southern Railway Company for delivery to the Central Stock Yards, or anyone at Central Stock Yards, Central Stock Yards, Kentucky, but would as to that car, and all cars of cattle billed in like manner, only make delivery at the Bourbon Stock Yards.

A. D. WARREN.

Subscribed and sworn to, before me, by A. D. Warren this 23 day of December, 1901.

My commission expires the 12 day of January, 1904.

CHARLES JOHNBOECKE,
Notary Public, Jefferson County, Kentucky.

Jefferson Circuit Court, Chancery Division.

325 CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of R. C. Watkins.

Affiant, R. C. Watkins states that he is Vice President and traffic manager of the plaintiff, Central Stock Yards Company, and that he has carefully read the affidavits of J. W. McCampbell and A. D. Warren filed herewith, and knows the facts therein stated to be true.

He further says that the Central Stock Yards Company had an interest in having the said stock delivered as directed by the owners and consignees thereof, in that its business is that of the operation of a stock yards plant, and is especially provided with appliances for safely loading, unloading, caring for, watering and feeding livestock, for all of which services so rendered by the Central Stock Yards Company to the owners of any and all such stock reasonable charges are made, and therein and thereby the business of Central
326 Stock Yards Company is maintained.

Affiant further says that the defendant, Louisville & Nashville Railroad Company, is neglecting, failing and refusing from day to day to recognize the right of owners and consignees of livestock to change its destination and point of delivery from that originally given, and that notwithstanding the fact that South Louisville is very near the premises of the Central Stock Yards Company's plant,

Form 114.—Revised November, 1899.

LOUISVILLE & NASHVILLE RAILROAD COMPANY'S

CONTRACT

FOR THE TRANSPORTATION OF LIVE STOCK OVER ITS OWN LINES.

Columbia Tenn. Station, Dec. 21 1901

This contract entered into at the above time and place between the Louisville & Nashville Railroad Company, hereinafter called carrier, and ..... hereinafter called the shipper,

WITNESSES, That the carrier will carry live stock at the rates established by it therefor, or, where certain risks, duties, and liabilities are assumed by the shipper, as hereinafter specified, will carry such live stock at greatly reduced rates and (if shipped in car-load quantities) will furnish the shipper or his agent free transportation on the train with said live stock.

In the present instance the shipper elects to avail himself of the said reduced rate and (if shipped in car-load quantities) free passage for himself or his agent on the train with said live stock, and has delivered on the cars of the carrier the following described live stock, to wit:

CONSIGNEE, DESTINATION, &c.	DESCRIPTION OF STOCK	Car Number
Allen Bros. Louisville Ky c/o Hart McCampbell & Co	Thirty (30) Cattle O R Ry M/L L. L. & Co. Nashville Tenn	L & N 18776

Delivered by
c/o Hart McCampbell & Co

M/L L. L. & Co.

Shippers attorney has been called to Jersys

CHARGES, $ 3.75

The carrier agrees to transport said live stock to destination if on said carrier's line of railroad, otherwise to the place where said live stock is to be received by the next connecting carrier for transportation to or towards destination, and the carrier guarantees that the freight rate thereon from point of shipment to destination shall not exceed the reduced rate of $40.00 per Car

In consideration of all of which the shipper hereby agrees to assume the risks, duties, and liabilities hereinafter specified, and that the transportation shall be upon the following conditions, which are admitted and accepted by said shipper as just and reasonable, viz.:

1. The shipper hereby releases the carrier from all liability in the transportation of said live stock, except as hereinafter agreed, and agrees that such liability shall be only that of a private carrier for hire, and that all liabilty of the carrier shall cease at the station to which such live stock is destined, if its destination be on the carrier's line of railroad, or if destined to a point beyond said carrier's line of railroad, then at said carrier's station, at its terminus, when ready to be delivered to the shipper, consignee, or carrier whose line may constitute a part of the route to destination.

2. The shipper has examined and found in good order and condition the car or cars provided by said carrier for the transportation of said animals, and hereby accepts the same and agrees that they are, as thus provided, suitable and sufficient for said purpose; and said shipper will at his own expense provide such bedding or other suitable appliances in said car or cars as will enable said animals to stand securely on their feet while in the same, and said shipper hereby releases said carrier from all liability for and on account of any and all injury or injuries which the said animals, or any of them, may receive in consequence of any or either of them being vicious, wild, unruly, or weak; and in consequence of any of them being killed, or maimed, bruised, or otherwise injured; and in consequence of heat, suffocation, or other ill effects of being crowded in the cars; and in consequence of being injured by the burning of hay, straw, or other material used by the shipper or his agent for feeding or bedding the said animals, or otherwise; and also from all damage or injury or loss which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike, or threatened violence to person or property from any source, and from any injury to track or yards, and from any and all other causes, whether mentioned herein or not, and from the escape of any of said animals, and for loss or damage to said animals from any cause or thing whatever not resulting from the negligence of the agents or servants of said carrier.

3. Said shipper will separate the different kinds of stock in said car or cars by strong partitions, which he will provide at his own expense and risk, and said stock shipped in mixed car-load or car-loads shall be at the entire risk of the shipper on account of any damage that may occur by reason of partitions in said car or cars not being properly made and sufficiently strong to prevent damage to said stock.

4. Said shipper will load and unload said animals at his own risk, and feed, water, and attend the same at his own expense and risk while they are in the stockyards of the carrier awaiting shipment, and while on the cars or at feeding or transfer points, or where they may be unloaded for any purpose.

5. Said shipper will see that said animals are securely placed in the cars furnished, and that the cars are securely and properly fastened so as to prevent the escape of said animals therefrom.

6. The employes of the said carrier shall provide the owner or person in charge of the said animals all proper facilities on trains and at stations for taking care of the same, but the business of the said carrier shall not be delayed by the detention of trains to unload and reload said animals for any cause whatever; but the cars may be left at a station upon the request of the person in charge of the same, and unloaded and reloaded by him to be forwarded by the next freight train if he so directs; and said carrier shall not be held liable for any damage or injury that may occur to said animals during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said animals are kept over at any given point by the said shipper or his agent beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which they may pass while in transit, then this contract shall be held to be voidable, at the option of the said carrier, and in such case such rates of freight may be imposed and collected by said carrier as may be deemed proper, not to exceed local rates from point where received for transportation to such point of detention.

7. In case of accident to or delay of trains, from any cause whatever, the shipper is to feed, water, and take proper care of said animals at his own expense.

8. The shipper or his agent or agents in charge of said animals shall ride on the freight train upon which the said animals are transported.

9. The presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the carrier from all liability on account of wrong delivery, but shall not be held to operate against the rights of the carrier to demand, if it elect, the identification of the party presenting this contract before delivering the said animals to him.

10. Should damage occur for which the said carrier may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed for a stallion or jack $150; for a horse or mule $75; mare and colt together $100; cow and calf together $35; domestic horned animals $30 each; calves, hogs, or sheep $5 each; chickens, ducks and guinea fowl $1.00 per dozen; geese $2.00 per dozen, and turkeys $3.00 per dozen; other animals $5.00 each, which amounts it is agreed are as much as such animals as are herein agreed to be transported are reasonably worth.

11. In case the said carrier shall furnish laborers to assist in loading and unloading said animals, they shall be subject to the orders and deemed employes of said shipper while so assisting.

12. As a condition precedent to the shipper's right to recover any damages for loss or injury to said animals, he will give notice in writing of his claim thereof to the agent of the railroad company or other carrier from whom he receives said animals before said animals are removed from the place of destination above mentioned, or from the place of delivery of the same to said shipper, and before said animals are mingled with other animals.

13. When necessary for said animals to be transported over the line or lines of any other carrier or carriers, to the point of destination, this contract shall, unless otherwise agreed in writing between such other carrier or carriers and the shipper, constitute the contract between the shipper and each of such other carriers respectively for the transportation over so much of its line as said shipment passes over in order to reach destination; and in no event shall one carrier be liable for the transportation of said animals over the line or lines of any other carrier, or liable for the negligence of any other carrier or carriers.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names.

WITNESS: Bentley Bullard
(To be other than other signer of the contract.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

By A. R. Shields Agent.

Allen Bros.

329

57

Louisville & Nashville Railroad Co.'s

CONTRACT

FOR

Transportation of Live Stock

OVER ITS OWN LINES.

Shipper_____

From_____ Station

To_____ Station

No. of Car_____

No. of Way-Bill_____

Date_____ 190__

No. of Cars Shipped_____

RELEASE.

We, the undersigned, in charge of the live stock mentioned in the within contract, in consideration of the free pass given us by the Louisville & Nashville Railroad Company, hereby agree that said company shall not be liable to us for any injury or damage of any kind suffered by us while in charge of said animals.

_____

_____

_____

_____

With_____ Cars, the numbers of which are noted within.

_____ 190__

PASS ON FREIGHT-TRAINS ONLY

_____

_____

_____

_____

Parties in Charge Accompanying Stock.

_____ Agent.

Only names of parties entitled to pass must be entered above, over the signature of the Agent, who must know that the correct names are entered, and draw a pen through the blank spaces.

all such stock now directly billed to the Central Stock Yards Company at Central Stock Yards, Kentucky, is by the defendant, Louisville & Nashville Railroad Company, carried a much greater distance than would be necessary for delivery at Central Stock Yards, and delivery thereof made at the Bourbon Stock Yards, and that the defendant, Louisville & Nashville Railroad Company, with respect to all such stock immediately unloads the same into pens of the Bourbon Stock Yards, and to have the said livestock so delivered where the owners and consignees desire delivery at Central Stock Yards from the Bourbon Stock Yards at the Central Stock Yards,
327 the said defendant, Louisville & Nashville Railroad Company, will not move the same except in a car furnished by the Southern Railway Company, which necessitates, unnecessarily, unloading and reloading the live stock, and a longer haul thereof in going around the City of East Louisville, and thence to the Bourbon Stock Yards, all of which consumes much time and occasions damage to the said livestock and additional cost to the owners and consignees thereof in having delivery thereof made as directed by such owners and consignees; and affiant verily believes that the policy so adopted and practiced by the defendant, Louisville & Nashville Railroad Company is against the spirit, if not the letter of the order of injunction herein, and that the same is adopted and prosecuted by the defendant, Louisville & Nashville Railroad Company for vexatious purposes only, and to disorganize and disrupt the established business of plaintiff Company; and affiant further says he is informed and believes that consignors and consignees of property in transit, and while in the possession of a common carrier may have the
328 destination thereof, or the consignee thereof changed, and that it is the duty of a common carrier when such request is so made to obey such direction, but that the defendant, Louisville & Nashville Railroad Company, will not recognize any such rights of owners and shippers of stock and by such course so adopted is greatly injuring the plaintiff and its business.

Affiant asks that this Honorable Court determine the rights of consignee and consignors to change the destination and point of delivery, as well as of a consignee thereof, and that the defendant, Louisville & Nashville Railroad Company, be punished for evading and violating the injunction herein.

R. C. WATKINS.

Subscribed and sworn to, before me, by R. C. Watkins this 23 day of December, 1901.

My commission expires the 12 day of January, 1904.

CHARLES JOHANBOCKE,
Notary Public, Jefferson Co., Ky.

(Here follows facsimile marked p. 329.)

330 JEFF. CO., KENTUCKY, 12/22/01.

Mr. J. F. Coady, Agent L. & N. R. R., South Louisville, Ky.

DEAR SIR: L. & N. R. R. Car 18726 loaded with 30 head Cattle from Columbia, Tenn. consigned to Allen Bros. Louisville, Ky. care Hart, McCampbell & Co. Your agent at Columbia, Tenn. failed to bill to Central Stock Yards, Central Stock Yards, Ky. via Southern Ry. at Louisville and I wish to change the destination of this car from Louisville, Ky. to Central Stock Yards, Ky. and request you to deliver this car to Southern Ry. to be billed to us at Central Stock Yards, Central Stock Yards, Ky. Please attend to this at once, as we must have this car at the Central Stock Yards, Central Stock Yards, Ky.

Yours truly, HART McCAMPBELL.

331 Received at
1 L. GR. D. 14 Collec.

Columbia, Tenn., Dec. 21st, 1901; Dec. 22nd, 1901.

Hart McCampbell & Co., Louisville, Ky.:

Shipped you load cattle see that they stop at Central Yards, see letter.

ALLEN BROS.

8.27 A. M.

Mess. Hart McCampbell, &c., Louisville, Ky.

GENTS: We shipped you one load cattle which I make draft for 500.00 the R. R. would not bill to your y'ds. I enclose you bill of lading. You see that they are stopped at Central Y'ds.

Yours, ALLEN BROS.

332 At a Court held on the 24th day of December, 1901:

Came parties by counsel, and the defendant having moved the Court to extend its order of December 12th, 1901, so as to show specifically what acts of defendant complained of in the affidavits filed by plaintiff in support of its rule for contempt are considered by the Court to have been violation of the said order of injunction.

It is considered by the Court that the said order of injunction was violated by defendant as to each of the car loads of stock referred to in the affidavits aforesaid filed in support of the rule for contempt heretofore issued, herein; to which the plaintiff objects.

Came the defendant by counsel and enters its appearance to the rule issued herein against it on the 23rd inst.

And on its motion ordered that time be and is given it to the 27th inst. to file its response herein.

Ordered that this action be and it is postponed to the 27th inst.

333 At a Court held on the 27th day of December, 1901:

Came parties, by counsel, and came defendant by counsel and filed a response to the rule issued herein against it on the 23rd inst.

Came plaintiff, by counsel and filed the affidavit of J. W. McCampbell herein.

And this action having been heard on the sufficiency of said response, ordered that this action be and it is submitted on said response.

Said response and affidavit of J. W. McCampbell filed herein on the 27th day of December, 1901, are as follows, to-wit:

334 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Response.

The Louisville and Nashville Railroad Company defendant in the above styled action for response to the rule issued against it herein returnable December 23rd, 1901, to show cause why it should not be punished for disregarding the order of injunction granted herein on November 23rd, 1901, says it has not in any respects disregarded the said injunction either in letter or in spirit.

Defendant says the stock, to-wit: the stock loaded in L. & N. car No. 18726, mentioned in the affidavits filed in support of the said rule was not received by it nor offered to it in Kentucky but as shown in the said affidavits at Columbia in the State of Tennessee
335 was transported by it from Columbia, Tennessee, to Louisville, Kentucky, as a continuous interstate shipment.

Moreover defendant says that the said stock was not billed or consigned to the Central Stock Yards Company or anyone else at Central Stock Yards Station, Kentucky, but was bill- and consigned by it to Louisville, Kentucky, at which place the live stock depot of the Louisville and Nashville Railroad Co. ny is at the Bourbon Stock Yard. And the shippers of said stock knew at the time the same was received and the bill of lading therefor issued by the defendant, that under said bill of lading the said stock would be delivered at the Bourbon Stock Yards in Louisville, Kentucky; and knew furthermore that the defendant did not agree and would not agree to deliver said stock to the Southern Railway to be carried to the Central Stock Yards, and that it had not issued and would not issue a bill of lading calling for the delivery of said stock to any one at the said Central Stock Yards; and defendant further says that while
336 it entirely denies the right of a shipper or consignee under the circumstances aforesaid to require it to deliver stock at a place or in a manner different from that prescribed by the written

contract, to-wit: the bill of lading, yet it further says in the case of the car mentioned in the affidavits filed in support of the rule aforesaid there was at the time of the alleged attempt to change the destination of said car, no offer to deliver up to defendant its outstanding bill of lading which it had previously issued, calling for the delivery of said stock at Louisville, Kentucky, nor any offer to pay to defendant its freight charges for the transportation of said stock, as the same had been theretofore agreed upon between defendant and the shippers of said stock.

Wherefore the defendant prays that the rule against it herein be discharged at plaintiff's costs.

CHARLES N. BURCH,
GIBSON, MARSHALL AND GIBSON,
HELM, BRUCE AND HELM,
Attorneys for Defendant.

337 M. H. Smith states that he is President of the defendant, the Louisville and Nashville Railroad Company, and that the statements contained in the above response to rule are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith, this 26th day of December, 1901.

My commission expires at end of next session of Senate.

E. C. TURNER,
Notary Public, Jefferson County, Ky.

338 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Affidavit of J. W. McCampbell.

J. W. McCampbell being duly sworn says that the statements in the response of the Louisville and Nashville Railroad Company to the rule issued against it herein, and this day filed, to the effect that Allen Bros., shippers of stock mentioned in the affidavits as a basis for the rule, knew at the time of receiving the live stock contract and bill of lading for the shipment of said car load of stock that the defendant, Louisville and Nashville Railroad Company, would not deliver said stock to the Southern Railway Company to be carried to the Central Stock Yards is not true.

He says it is true that the said Louisville and Nashville Railroad Company would not issue, and did not issue a bill of lading
339 calling for the delivery of said stock to anyone at Central Stock Yards, or otherwise than as shown in his original affidavit herein, but that immediately upon receiving the livestock contract and bill of lading for the said shipment, said Allen Brothers

wired this affiant's firm to demand of the Louisville and Nashville Railroad Company that the said stock be stopped and delivered to said Hart, McCampbell and Company at the Central Stock Yards Company's plant, Central Stock Yards, Kentucky, which said telegram preceded the arrival of the car load of stock, and the demand, as in his original affidavit, was made before the arrival of the said car.

And he further says that at the time of making the demand of J. F. Coady, Agent of the Louisville and Nashville Railroad Company at South Louisville that the said car load of livestock be delivered to the Southern Railway Company for delivery to affiant's firm at Central Stock Yards Company's plant at Central Stock Yards,
340 Kentucky, the said J. F. Coady, as the representative and agent of the Louisville and Nashville Railroad Company, did not, nor did anyone for the Louisville and Nashville Railroad Company at South Louisville, or elsewhere, as a condition to the right of such change of destination, demand that the livestock contract and bill of lading be delivered to the said defendant, Louisville and Nashville Railroad Company, or that the freight charges on the said car be paid, and that nothing whatsoever was said respecting the freight charges or delivery of the contract or bill of lading to the said Louisville and Nashville Railroad Company as a condition to its changing the destination of said car.

Affiant further says that he has been engaged in the livestock brokerage and commission business for a number of years, and that he has had a considerable amount of experience on the Louisville market as a shipper and handler of live stock for others, and that it has been the custom of the Louisville and Nashville Rail-
341 road Company and all other railroad companies entering Louisville not to demand pre-payment of freight upon delivery of live stock at point of destination, but such payment has uniformly, without objection on the part of the Louisville and Nashville Railroad Company, or other railroad companies, been made at a later date, and almost universally out of the proceeds of the sale of such live stock so consigned, and that this practice and usage is well established and known to all shippers and dealers throughout the country, and that upon the date of demand, as aforesaid, for the change of the destination of the car load of stock mentioned in his original affidavit nothing was said indicating any purpose to deviate from such established custom and usage.

Affiant further says that at the time of the making of the demand of the agent of the defendant, Louisville and Nashville Railroad Company, for the change of the point of destination of the said car load of stock mentioned in his original affidavit, he was ready, willing and able to surrender to the agent of the Louisville and Nash-
342 ville Railroad Company at South Louisville the livestock contract and bill of lading for said car of livestock, and also to pay the full Louisville rate to the said Louisville and Nashville Railroad Company as its charges for such transportation, but that no intimation of any demand of any character was made, either for the said contract or the said freight charges, but that the refusal on the

part of the defendant to change the point of destination was absolute and unqualified, as in the original affidavits herein, as a basis for this rule, stated.

J. W. McCAMPBELL.

Subscribed and sworn to before me, by J. W. McCampbell this 27th day of December, 1901.

My commission expires the 12th day of January, 1904.

CHARLES JOHANBOCKE,
N. P. J. C., Ky.

343 At a Court held on the 2nd day of January, 1902:

The Court being advised, delivered a written opinion herein upon the response to the second rule for contempt herein, which is ordered to be and is now filed and made part of the record herein.

And in pursuance of said opinion, ordered that the response of the defendant to the rule issued herein against it on the 23rd of December, 1901, be and is held to be insufficient; and further ordered that said rule be and is hereby made absolute.

And it is adjudged that the defendant is in contempt of Court in having violated the order of injunction, and this being the second violation a fine of twenty dollars is imposed.

Ordered that the Commonwealth of Kentucky recover of the Louisville and Nashville Railroad Company the sum of twenty dollars and may have *capias pro fine*.

And further adjudged that plaintiff recover of defendant
344 its costs on said rule, and may have execution.

Said opinion filed herein on the 2nd day of January 1902, is as follows, to-wit:

Jefferson Circuit Court, Chancery Division.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Opinion Upon Response to Second Rule for Contempt.

This action is submitted upon the sufficiency of defendant's response to the rule issued against it requiring it to show cause why it should not be punished for violating the order of injunction
345 herein.

From the affidavits of J. W. McCampbell, W. D. Warren, R. C. Watkins, it is shown that Hart, McCampbell & Company, is a commission firm, engaged in the business of purchasing and selling live stock at the Central Stock Yards, Central Stock Yards, Kentucky; that on December 21, 1901, at Columbia, Tennessee, a regularly established station on the Louisville and Nashville Railroad, Allen Bros., customers of said Commission firm, tendered to the agents and employés of the Louisville and Nashville Railroad Company at said station, a car load of cattle which were loaded in L. & N. car No.

18726, and billed to Allen Bros., Louisville, Ky., care of Hart, McCampbell and Company; that at the time said stock was so tendered, said Allen Bros. demanded of the Louisville and Nashville Railroad Company, that same be billed transported transferred and delivered to the Southern Railway Company at Louisville, for delivery by said road to the Central Stock Yards, Central Stock Yards, Ken-
346 tucky, care of said commission firm, but that said agents and employés refused to so bill, but did receive and bill them as stated; that said Allen Bros. immediately forwarded said bill-of-lading to Hart, McCampbell and Co. accompanied by letter advising said firm that they had shipped the car load of cattle, and had made a draft on them for the sum of Five Hundred ($500.00) Dollars, and that the railroad would not bill them as requested, but authorized the said commission firm upon the arrival of said stock at South Louisville, to demand that they be delivered at the Central Stock Yards, Central Stock Yards, Kentucky, via Southern Railway Company; that they also wired said commission firm to the same effect; that on the 22nd day of December, 1901, and before the said car reached South Louisville, said Commission firm gave written notice to the agent of the Louisville and Nashville Railroad Company, one J. F. Coady, at South Louisville, to change the destination of said car load of cattle, by delivering same to the Southern Railway Company, for delivery at Central Stock Yards, Central Stock Yards, Kentucky, but that said agent refused to so change the
347 destination of said car, and announced at the time, that he would not deliver same to the Southern Railway Company for delivery to the Central Stock Yards or any one at Central Stock Yards, but that he was instructed by the road, and would in cases of all cars so billed, regardless of any request of change in destination deliver same only at the Bourbon Stock Yards; that at the time of said request for change of destination was made by said Hart, McCampbell & Co., they then and there were ready, willing and able to deliver up said bill of lading or contract of shipment, and to pay all freight due and owing the Louisville and Nashville Railroad Company, but no demand was made of them at the time, for the delivery of said bill or the payment of the freight, but on the contrary, they were told by said agent, that under no circumstances would he change the destination of said car.

It is shown by said affidavits that the Louisville & Nashville Railroad Company, from day to day, is neglecting, failing and refusing to recognize the right of the consignor or consignee, or both,
348 to change the destination of stock coming over their lines to South Louisville, notwithstanding the fact that said yards of said road at South Louisville or within a short distance of the Central Stock Yards, and that South Louisville Station is the Break-up yards of all freight coming from the South, and that a transfer to the Central Stock Yards could be made from 7th and Magnolia Connection between the Louisville and Nashville Railroad Company and the Southern Railway Company in Kentucky, which connection is not exceeding a mile and a half from the Central Stock Yards, while to deliver it at the Bourbon Stock Yards, would necessitate an

additional haul of some six or seven miles, that to deliver said stock at the Bourbon Stock Yards which was intended for the Central Stock Yards would necessitate said additional haul of 6 or 7 miles to said Bourbon Stock Yards, and that there, the Louisville and Nashville Railroad Company, invariably unloaded same and in all cases, required that a Southern Railway Company car be furnished,
349 and that all of this occasioned delay, injury to stock, and expense of feed and care at said Bourbon Stock Yards.

It is also shown by the petition in this case, which is undenied either by answer or affidavit, that the Southern Railway had notified the Louisville and Nashville Railroad Company, that it would assume the payment of all freight on any and all cars delivered to it for delivery at the Central Stock Yards, Central Stock Yards, Kentucky, and also would assume all responsibility for the safe delivery thereof.

By the additional affidavit of J. W. McCampbell, filed herein, it is shown that it has been the custom of the Louisville and Nashville Railroad Company, and all other railroad companies entering Louisville, not to demand prepayment of freight upon delivery of livestock at points of destination, but such payment has uniformly, without objection on the part of said road, been made at a later day and almost universally after the sale of said stock and out of the proceeds thereof, and that this practice and usage is well established and known to all shippers and dealers throughout the coun-
350 try, and that at the time the request was made herein for the change of the destination of this carload of stock, the agent of said road did not indicate any purpose to deviate from such established custom or usage, but on the contrary, unconditionally refused, under any circumstances to so change said destination.

After making a broad denial of any attempt or disobedience of the order of injunction, the response alleges that at the time of the shipment, the consignors knew that this stock would be delivered at the Bourbon Stock Yard. By an additional affidavit of J. W. McCampbell filed herein, that allegation is controverted.

Defendant then denies the right of any shipper or consignee, under any circumstances, to require a delivery at a place or in any manner different from that prescribed by the written contract of shipment. It further alleges that said shipment was an interstate shipment.

351 It further alleges that plaintiff did not offer to pay the freight or surrender the bill of lading at the time the request was made for a change of destination.

Upon the issue made by the affidavits and response, four propositions are presented:

1st. The right of the consignor or consignee or both jointly, to change the destination of a shipment.

2nd. The right of the Court by injunction, to require of a common carrier, a change in destination of a shipment from the State of Tennessee, after the same has reached the City of Louisville.

3rd. Whether or not a tender of freight charges and bill of lading was a pre-requisite to a demand for change in destination in this

case, where no demand of payment of said freight or delivery of bill of lading was made by the common carrier, but where said carrier announced at the time, that in no event, would said destination be changed, and where it is further shown that it was the com-
352 mon custom and usage not to require such pre-payment of charges, and

4th. Whether or not, the terms of injunction herein are broad enough to make the acts of the defendant a violation thereof.

I.

As to the first proposition, the right of the consignor or consignee to change the destination of a shipment:

In Hutchinson on Common Carriers (2nd Ed.) section 134, it is said:—

"When there has been no agreement to ship the goods which will make the delivery of them to the carrier a delivery to the consignee, and vest the property in him, the shippers may, even after the delivery to the carrier, and after the bill of lading has been signed and delivered, or after the goods have passed from the possession of the initial carrier into that of a succeeding one, alter their destination and direct their delivery to another consignee, unless the bill
353 of lading has been forwarded to the consignee first named *are* to some one for his use. But after the carrier or his agent has given one bill of lading or receipt for the goods he cannot give another, unless the first and all the duplicates of the same have been returned to him."

Again in Section 337, it is said:

"So long as the goods remain the property of the bailor he may countermand any direction he may have given as to their consignment, and may at any time during the transit require of the carrier their delivery to himself; and if such delivery can be made without too much inconvenience or expense to the carrier he will be bound to make it. A carrier is employed as bailee of a person's goods for the purpose of obeying his directions respecting them, and the owner is entitled to receive them back a any period of the journey when they can be got at. To say that a carrier is bound to deliver goods according to the owner's first directions is a proposition wholly unsupported either by law or common sense. I can well understand the case of goods being placed in such a position that they
354 cannot easily be got at, though it is usually otherwise. But if the goods are demanded by the owner during the transit, when the carrier is willing and able to fulfil- the contract on his part, the latter will be entitled to his full freight for the whole distance to the destination to which they were originally directed, and any expense he may be put to in unloading. If this be tendered, and he refuses to restore the goods it will amount to a conversion. The owner cannot, however, it is said change the destination and require delivery somewhere else, except upon the basis of a new contract, after the carrier has completed his undertaking and carried the goods to the destination first agreed upon."

Counsel for plaintiff also rely upon Sutherland *vs.* Second National

Bank of Peoria, 78th Ky., 250, and Louisville & Nashville Railroad Co. *vs.* Hartwell, 99th Ky., 436, while defendant insists that those cases are not applicable to this case, because the rights of the carrier were not drawn in question, but that the controversies were entirely between shippers and consignees, or their creditors respectively.

Counsel for defendant concede the consignor's right to change
355 the consignee, but dispute his right to change the destination.

It should be borne in mind, however, that the right here claimed is, in one view but an application of the common law doctrine of *stoppage in transitu*—a right highly favored in law. Benjamin on Sales, Sec. 830; Smith's Mercantile Law, Sec. 634 (Pomeroy's Ed.) *et seq.*

If the shipper has the right to stop the delivery of his goods at any time before delivery, he certainly has the right in this case, to stop them at South Louisville, which is some six or seven miles short of the final destination. And having the right to stop his goods at that point, Section 213 of the Constitution gives him the right to require the defendant to switch or deliver the car to the intersecting road at that point. To hold otherwise would be a failure to give any practical effect to section 213 of the Constitution.

On the other hand, if the crossing at South Louisville be treated as a part of the terminal point called for by the bill of lading,
356 as defendant seems to contend, then the delivery of the car at that point to the Southern Railway is a delivery to a different consignee at the end of the journey and not a change in destination, and the Kentucky cases relied on *supra* are applicable.

In the instance under consideration, the point of crossing at South Louisville must be considered either as an intermediate point on the line, or as the destination. If it be the first, the Constitution requires the switching to be made; if it be the latter, the shipper has the right to change the consignee at the destination.

Upon the broader question, as to the right to change the destination, see Strahorn *vs.* Union Stock Yards & Transit Co., 43rd Ill., page 424 (92nd Am. Dec., 142); Michigan Southern & Northern Indiana Railroad Company *vs.* Justic- Day, 20th Ill., 375; Lewis *vs.* Galena & Chicago U. R. R. Co. 40th Ill., 281; London & North-Western Railway Co. *vs.* Bartlett, 7th Hurlston & Norman's report, 400; Southern *vs.* Railway Co., 8th Exchequer Reports, 345.

357 II.

Upon the second proposition, as to the right of the Court by injunction, to require of a common carrier to make a change of the destination of a shipment from the State of Tennessee, after same has reached the City of Louisville, in the State of Kentucky.

It is contended for defendant that because this was an interstate shipment, that by the provision of the Constitution of the United States and the Act thereunder, known as the Interstate Commerce Act, the State was deprived of any right to pass any statute whatever, pertaining to said matter.

The third section of the Interstate Commerce Act (Second edition

of the First Supplement of the U. S. Revised Statutes,) page 529 provides:—

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

The 213 Section of the Constitution of Kentucky, provides:—

"All railroad, transfer, belt lines and Railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, draw-back or rebate in favor of any person, corporation, consignee or consignor, in any manner as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

It will be readily seen that *that* there is little if any, substantial difference between the provisions of the Interstate Commerce Act of Congress and the provisions of the Kentucky Constitution upon this subject. They both look to the facilitating of commerce, not an interference with it. And in this connection, the following language of Mr. Justice Brewer, in the late case of Western Union Telegraph Co. *vs.* Call Publishing Co., 181 U. S. 102, is both pertinent and instructive:—

"Can it be" says Mr. Justice Brewer, "that the great multitude of interstate commercial transactions are freed from the burdens created by the common law, as defined, and are subject to no rule except that to be found in the Statutes of Congress? We are clearly of opinion that this cannot be and that the principles of the Common law are operative upon all interstate commercial

transactions, except so far as they are modified by congressional enactment.

But this question is not a new one in this court. In Interstate Commerce Commission *v.* Baltimore and O. R. Co., 145 U. S. 263, 275, 36 L. *b*ed. 699, 704, 4 Inters. Com. Rep. 92, 96, 12 Sup. Ct. Rep. 844, 847, a case which involved interstate commerce, it was said by Mr. Justice Brown, speaking for the Court:—

" 'Prior to the enactment of the act of February 4th, 1887, to regulate commerce, commonly known as the interstate commerce act (24 Stat. at L. 379, Chap. 104), railway traffic in this country was regulated by the principles of the common law applicable to common carriers.'

In Bank of Kentucky *v.* Adams Exp. Co. and Planters Nat. Bank *v.* Adams Exp. Co. 93 U. S. 174, 23 L. ed. 872, 874, the express companies received at New Orleans certain packages for delivery
362 at Louisville. These were interstate shipments. In the course of transit the packages were destroyed by fire, and actions were brought to recover the value thereof. The companies defended on the ground of an exemption from liability created by the contracts under which they transported the packages. Mr. Justice Strong, delivering the Opinion of the Court, after describing the business in which the companies were engaged, said:

" 'Such being the business and occupation of the defendants, they are to be regarded as common carriers, and in the absence of stipulations to the contrary, subject to all the legal responsibilities of such carriers.'

"And then proceeded to show that they could not avail themselves of the exemption claimed by virtue of the clauses in the contract. The whole argument of the Opinion proceeds upon the assumption that the common law rule in respect to common carriers controlled."

In Wisconsin &c. R'd. Co. *vs.* Jacobson, 179 U. S. 294, it is said:—

"Plaintiff in error urges that transporting cattle from Min-
363 nesota to Iowa constitutes Inter-state Commerce and that neither the State of Minnesota nor its railroad commission has the right to in any manner interfere with or regulate such commerce. The judgment in this case however, neither regulates nor interferes with that commerce, nor does that part of the Statute upon which the judgment is founded. Whether any other portion of the Statutes does regulate such commerce is beside the question, and it is not necessary to here decide. To provide at the place of intersection of those two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of property and cars to and from
364 their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any, and would in no wise regulate such commerce within the meaning of the Constitution. That is all that has been done by the judg-

ment under review. A State may furnish such facilities or direct them to be furnished by persons or corporations within its limits without violating the federal constitution."

* * * * * * *

"Adhering strictly to the question involved in this case namely, the validity or the invalidity of the judgment actually rendered, we are met by the objection of the plaintiff in error that the judgment itself is necessarily and inherently illegal, because upon the conceded facts, if the judgment be enforced, it can only result in taking the property of the plaintiff in error without due process of law, and in refusing it the equal protection of the laws and in depriving it of its liberty to contract with such persons or cor-
365 poration as it may choose. We think not one of these objections is tenable. At common law the Court would be without power to make such an order as was made in this case by the State Court. Legislative authority would be necessary in order to give power to the Courts to render a judgment of the kind. If power were granted by the Legislature, and it amounted in the particular case simply to a fair, reasonable and appropriate regulation of the business of the corporation, when considered with regard to the interest both of the company and of the public, the Legislation would be valid, and would furnish, therefore, ample authority for the Courts to enforce it. Atchison &c. Railroad Company *vs.* Denver &c. Railroad Company, 110 U. S. 667, 681; People *ex rel.* &c. *vs.* Boston & Albany Railroad Company, 70 N. Y. 569; People *vs.* Railroad Company, 104 N. Y., 68.

"Railroads have from the very outset been regarded as public high-
way-, and the right and the duty of the Government to regu-
366 late in a reasonable and proper manner the conduct and business of railroad corporations have been founded upon that fact. Constituting public highway of a most important Character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions. Olcott *vs.* Supervisors, 16 Wall., 678, 694; Cheroke- Nation *vs.* Southern Kansas Railway Company 135 U. S. 641, United States *vs.* Joint Traffic Association, 171 *Id.* 505-569, 570; Lakeshore Railway Company *vs.* Ohio, 173 *Id.* 285, 301.

"It is because they are such highways upon which the rails are laid, and also that which may be necessary for the other purpose of the corporation, is said to be used for a public purpose, and on that ground the power of eminent domain which is given them is held to be a constitutional exercise of legislative authority. The right of the legislature to tax in furtherance of such use is founded
367 upon the same considerations that the use is a public one, and therefore, taxation in support of such use is valid. (Olcott *vs.* Supervisors, *supra.*) The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests and to subserve primarily the public good and convenience. * * * We think this case is a reasonable exercise of the power of regulation in favor of the interests and for the

accommodation of the public, and that it does not, regard being ha to the facts unduly unfairly or improperly affect the pecuniary right or interest of the plaintiff in error."

See also:—

Lake Shore & Mich. Southern Rw. *vs.* Ohio, 173 U. S. 285
Western Union Tel. Co. *vs.* James, 162 U. S. 650; State o
Iowa *vs.* Chicago, N. & St. P. Rw. Co. 33 Fed. Rep. Pag
391.
Chicago and N. St. P. Rw. Co. *vs.* Becker, 32 Fed. Rep., 84

368 No attempt is here made to enforce the provisions of th State Constitution beyond the limits of the State, and n other State could by Constitutional or Legislative enactment affe in any degree the duty of the Company in relation to making d livery of freight. No confusion therefore could be expected in carry ing out within the limits of this State, the provisions of our Co stitution.

Our Constitutional requirements are not a regulation of the inte state commerce, but affects it only incidentally.

"While it is vitally important that commerce between the Stat should be unimbar-assed by vexatious State regulations regarding i yet on the other hand there are many occasions where the publi power of the State can be properly exercised to insure a faithful an prompt performance of duty within the limits of the State upon th part of those who are engaged in Interstate Commerce." (162 U. S 662.)

III.

As to the third proposition; whether or not a tender
369 the freight charges and the Bill of Lading, was a prerequisi to a demand for a change in consignee or in destination.

It is shown that in regard to these shipments of live stock that was the common custom and usage, not only of this road but of a others, not to require pre-payment of charges before the delivery the stock but to await even its sales, and collect out of the proce thereof, and it is also shown that plaintiff was not notified, in an way, that the defendant desired to depart from this common custo and usage, there being no demand made whatever, at the time.

In the second Ed. of the American and English Ency. of La Vol. 5, page 166, it is said:—

"Upon a demand therefor by the carrier, the shipper is bound prepay all freight charges on goods tendered for transportation."

A number of authorities are cited thereunder, in suppo
370 of the tax.

In Galena & Chicago U. R. R. Co. *vs.* Rae, 68, Am. D 574, it was held that a Railroad Company may demand pre-payme of freight charges, but in omitting such demand, the company comes bound to transport the freight according to its custom, a slight evidence of willingness to pay will be sufficient to support action for damages caused by refusal to receive such freight.

Besides this, in the case at bar, as shown by allegations of the pe

tion which stands confessed, the Southern Railway Company had assumed all responsibility, not only for the payment of all freights to the defendant, but for the safe delivery of the goods to the consignee, and the defendant has never indicated in any way, its non-acceptance of this assumption. Under the circumstances, therefore, there being no demand for this freight or bill of lading, no necessity of tender arose.

371 But in any event, it is shown that at the time this demand for change in destination was made, the agent at South Louisville acting for defendant, *announced that he had received instructions, under no conditions, to deliver any goods, billed as these were, to any place other than the Bourbon Stock Yards.*

And as said in the American and English Ency. of Law, 1st Ed. Vol. 25, page 904:

The actual production of money is not required where the party is ready and willing to pay it, but is prevented by the creditor's declaring that he will not receive it, or by his making any declaration equivalent to a refusal to accept it if tendered."

See also the following cases:—

Dorsey *vs.* Cock, 4 Bibb., 74;
Tibbs *vs.* Timberlake, 4 Littell, 16;
Dorsey *vs.* Barbee, Littell's select case page 205;
Stapp *vs.* Phelps, 7 Dana, page 301;

372 Sanford *vs.* Farmer's Bank, 1st Bush, 340;
Mundy *vs.* Kean's Administrator, 5 Ky. Law Rep., 697;
Jones *vs.* Strode, 19th Ky. Law Rep., 1118.

In the case at bar, it is shown that plaintiff was ready and willing and able to have delivered up said Bill of Lading and to have paid all charges, if defendant had not made the absolute and unconditional refusal to change the destination of these goods.

IV.

As to the 4th and last proposition, that is admitting the charges proven, as made; do the facts show a violation of this injunction?

By the authorities cited, it seems perfectly clear that the enforcement, in the State of Kentucky, of the provisions of Sec. 213 of the State Constitution, is not in conflict with the provisions of the Interstate Commerce Act, and Instead of such enforcement being

373 an unreasonable interference with Commerce, it is an aid thereto. Therefore, when these goods, although being an interstate shipment, came within the State of Kentucky at the South Louisville station, it became the duty of this Court, under the law of Kentucky, and the facts of this case, to require same to be transferred and delivered in accordance with the express provision of the Constitution.

The injunction rendered herein, reads as follows:—

"And in pursuance of said Opinion it is ordered and adjudged that the defendant, Louisville & Nashville Railroad Company, be enjoined and restrained from neglecting, failing or refusing to receive, and said Louisville and Nashville Railroad Company is hereby re-

quired and compelled until further order of the Court herein to receive at any and all of its Stations in Kentucky, and to bill, transport, transfer, switch and deliver in the customary way at its
374 most convenient and practical point of physical connection between its tracks in Louisville, Kentucky, and the tracks of the Southern Railway Company in Kentucky, and at their Seventh and Magnolia Street Connection, *any and all livestock and other freight* consigned to the Southern Railway Company in Kentucky at Louisville, Kentucky, for the Central Stock Yards Company for transportation and delivery by said Southern Railway Company in Kentucky to plaintiff at Central Stock Yards, Kentucky, or any other person or persons at said Station, or in care of said Central Stockyards Company at said Station, and to so transfer, switch and deliver to said Southern Railway Company in Kentucky, at Louisville, Kentucky, and at said point of physical connection *any and all live stock and other freight coming over its line in Kentucky consigned to the Central Stockyards Company at Central Stockyards, Kentucky,* or any other person or persons, at said Station, or in care of said Central Stock Yards Company at said station for trans-
375 portation and delivery by said Southern Railway Company in Kentucky at Louisville, Kentucky, as so billed and consigned."

When this stock arrived in Kentucky, it came under the first clause contained in this injunction, and the consignor and consignee, as they undertook to do, had the right to have same transported, transferred, switched and delivered as requested, and that right is clearly shown and emphasized as to stock, the shipment of which originated without the State by the Second Clause of said injunction.

The demand made in this case at bar, nowise interfered with the interstate commerce, since freight coming from the South, regardless of this request, would necessarily have to be taken to the break-up-yards in South Louisville, and from there, deliveries made to the various destination of the shipments.

At Seventh and Magnolia, there was a physical connection
376 between the two roads, and to require a delivery there, was reasonable and less burdensome to defendant, than a delivery at the Bourbon Stock Yards, and such delivery at Seventh and Magnolia, did not in any way, interfere or delay with other shipments.

Conceding the proposition that the consignor and consignee had the right to change the destination of shipments, this shipment in question, at the time the request was made at the Southern break-up-yards, being in the State of Kentucky, is fully covered by the first clause of the injunction.

The response is insufficient. The rule will be made absolute, and the defendant is adjudged to be in contempt of Court in having violated the order of injunction; and this being the second violation thereof, a fine of twenty dollars will be imposed.

SHACKELFORD MILLER, *Judge.*

377 Thereupon on the 10th day of January, 1902, the following second amended petition was filed in the Clerk's office:

Jefferson Circuit Court, Chancery Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Second Amended Petition.

Plaintiff Central Stock Yards Company, before answer further amends its petition herein, and for amendment thereto says that, all the allegations and statements of fact contained in its original and amended petition are true, and it now refers to and makes a part hereof said allegations and statements of fact to the same extent as if copied herein.

378 Plaintiff further says that the Southern Railway Company in Kentucky has at Louisville, Ky. at least three points of physical connection between its tracks and the tracks of the defendant, Louisville and Nashville Railroad Company, which are known respectively as the Bergen and Mehan switch or connection, the Fourth Avenue connection, and the Seventh and Magnolia Street connection. The Bergen and Mehan Co. switch is at the intersection of the said Southern Railway Company's tracks and the tracks of the said Louisville and Nashville Railroad Company at or near Floyd Street, or between Floyd and Brook Streets, and is about fourteen hundred and seventy five (1475) feet in length. It says that about nine hundred and seventy-five (975) feet of said Bergen and Mehan switch or siding and physical connection between the tracks of said Southern Railway Company in Kentucky and the tracks of the defendant, Louisville and Nashville Railroad Company are owned by the Southern Railway Company in Kentucky, and about five hundred (500) feet of said switch or siding and physical

379 connection is known as the Bergen & Meehan private switch, but that the defendant, Louisville and Nashville Railroad Company, has the right to and does use said Bergen and Meehan five hundred (500) feet of said siding or switch, and same forms a connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the defendant, Louisville and Nashville Railroad Company, and is only about twenty two hundred (2200) feet from plaintiff's plant and the station in Jefferson County Kentucky, on the line of the Southern Railway Company in Kentucky known as Central Stock Yards Kentucky; that the Fourth Avenue connection is only about one hundred and twenty eight (128) feet in length, is about equally owned by the defendant, Louisville and Nashville Railroad Company, and the Southern Railway Company in Kentucky and is about half a mile from plaintiff's plant, and the Station in Jefferson County Kentucky, on the line of the Southern Railway Company in Kentucky known as Central Stock Yards, Kentucky; that the Seventh and Magnolia Streets connection consists of

a track in length about twenty four hundred and fifty four
380 (2454) Feet with siding in connection therewith in length about eleven hundred and seventy two feet (1172) Feet; that upon said Main track connection and siding there can be handled about seventy four (74) cars at one time of interchange traffic of the one Railway Company or system with the other, and that said point of physical connection is only about one mile and a half from plaintiff's plant and the station in Jefferson County, Kentucky on the line of the Southern Railway Company in Kentucky known as Central Stock Yards, Kentucky.

Plaintiff further says that its business is that of the operation of a stock yard plant, and as such it is especially provided with the most modern and of the best appliances for safely loading, unloading, carrying for, watering and feeding live stock, and that for all of such services so rendered by it to the owners of any and all live stock reasonable charges are made, and therein and thereupon its business is made to depend. It further says that at its plant sales of
381 live stock are daily made; that there are a large number of brokerage and commission firms doing business and have their offices at its yard; that said commission firms have many customers for whom they daily at plaintiff's yards make purchases of live stock, and who carry on the business of packers and butchers along the lines of the Louisville and Nashville Railroad Company in the Eastern portion of the City of Louisville, and near the live stock depot of defendant which is the Bourbon Stock Yards; that said packers and butchers can receive stock purchased at plaintiff's plant only over the Southern Railway Company in Kentucky at Central Stock Yards, Kentucky to be carried to one of the points of physical connection between its tracks and the tracks of defendant, Louisville and Nashville Railroad Company, and there delivered to said Louisville and Nashville Railroad Company, and by said Louisville and Nashville Railroad Company transported to and delivered at its livestock depot in the City of Louisville, namely, the Bourbon Stock Yards, Louisville, Kentucky.

382 Plaintiff further says that the sidings, switches, tracks and other railroad facilities are the same for shipments going out of the Central Stock Yards and from Central Stock Yards, Kentucky, as they are for entering it, and that — is just as easy to ship stock from the Central Stock Yards at Central Stock Yards, Kentucky, to points of destination along the line of the Louisville and Nashville Railroad Company as to receive it coming from points on the Louisville and Nashville Railroad Company to Central Stock Yards.

Plaintiff says that it is as essential and necessary in the operation of its plant that live stock can be shipped from its plant as to have live stock shipped to its plant, and that heretofore the said Louisville and Nashville Railroad Company has been receiving, switching, transferring, transporting and delivering live stock originating at Central Stock Yards, Kentucky, on the line of the Southern Railway Company in Kentucky and destined to persons at Bourbon Stock Yards, Louisville, Ky., and the live stock depot of the Louis-

ville and Nashville Railroad Company; and the said Louis-
383 ville and Nashville Railroad Company is now receiving, from day to day, when and as offered live stock destined to Bourbon Stock Yards, Louisville, Kentucky, and the live stock depot of the Louisville and Nashville Railroad Company at Louisville, Ky., from other points or stations on the line of the Southern Railway Company in Kentucky, but that on or about December 23rd, 1901, defendant, Louisville and Nashville Railroad Company, gave notice that thereafter it would not receive, and it now refuses to receive, from the Southern Railway Company in Kentucky or switch, transfer, transport, or deliver any live stock coming from Central Stock Yards, Kentucky, and destined to any person at Bourbon Stock Yards, and the live stock depot of said Louisville & Nashville Railroad Company except to the extent it has been required so to do as to all live stock shipped by the Commission firm of Stewart, Sanders, Miller & Company by mandatory restraining order of this Court in action No. 3598, styled Stewart, Sanders Miller & Company *vs.* Louisville and Nashville Railroad Company, &c. now pending in the law and Equity division of the Jefferson Circuit Court.

384 Plaintiff says that there are a number of packers and butchers in the Eastern portion of the City of Louisville who can be reached only over the lines of the defendant, Louisville & Nashville Railroad Company and who are desirous of making purchases of live stock at plaintiff's plant and through live stock Commission firms thereat; that the distance between the plaintiff's plant and the packing establishments in the eastern portion of the City of Louisville is too great to have the said live stock removed by being driven through the streets, and that their removal for such a distance through the streets would be dangerous to pedestrians and the public generally.

Plaintiff further says that defendant Louisville & Nashville Railroad Company will not make delivery of live stock of any character to packers and butchers at their places of business and on its line in the Eastern portion of the City of Louisville but will only make delivery thereof at the Bourbon Stock Yards, and that unless said packers and butchers in the Eastern portion of the City of Louisville can have their purchases of live stock made at plaintiff's plant delivered at the Bourbon Stock Yards, and live stock depot of defend-
385 ant they will not make any purchases at plaintiff's yards, and the business of said packers and butchers will be lost and the Commission merchants and plaintiff will thereby sustain great and irreparable damage.

Plaintiff further says that the refusal of the Louisville and Nashville Railroad Company to receive, switch, transfer and make delivery of live stock originating from Central Stock Yards, Kentucky, on the line of the Southern Railway Company in Kentucky, was and is arbitrary, unlawful and oppressive; that some of the packers and butchers in the Eastern portion of the City of Louisville, and near the live stock depot of defendant, Louisville and Nashville Railroad Company, *or* large purchasers of live stock, and that the refusal and unlawful and unauthorized action on the part of the Louisville and

Nashville Railroad Company to receive, switch transfer, transpor
and make delivery of live stock at its live stock depot i
386 Louisville, Kentucky, purchased at plaintiff's plant will re
sult in the loss of said patrons at plaintiff's Yards, and loss o
large quantities of live stock for sale at its yards, and inevitably re
sult in great and irreparable damage to plaintiff and of a nature no
susceptible of measurement or ascertainment.

Plaintiff further says that it has no adequate or ample remedy a
law for the injury to its business herein complained of and that a
action or actions for damages upon each and every refusal of th
defendant, Louisville and Nashville Railroad Company, to receive
switch, transfer, transport and made delivery of live stock to pur
chasers on the line of the Louisville and Nashville Railroad Com
pany, and originating in shipment at Central Stock Yards, Ken
tucky, would be wholly inadequate to the injury inflicted and such
remedy would occasion such delay to packers and butchers in re
ceiving their stock and damage to the stock as would be impossibl
of accurate measurement.

387 Plaintiff further states that the injunction by this amend
ment sought and prayed for herein has never been refuse
by this Court, or by a judge of this Court, or by any Circuit Judg
or by any Judge or officers whatsoever, and that the injuries inflicte
upon it and threatened by the defendant as herein complained of an
injury to its business imperatively require that in addition to th
relief granted to it hereinbefore by mandatory temporary injunction
the said mandatory injunction be enlarged and be perpetrated, an
that a mandatory perpetual injunction be issued for and in behal
of plaintiff requiring that the defendant, Louisville & Nashvill
Railroad Company, in addition to the relief herein before praye
be required to receive from the Southern Railway Company in Ken
tucky at one of the points of physical connection between the track
of the Southern Railway Company in Kentucky and the track of th
said Louisville and Nashville Railroad Company in Louisville, Ken
tucky, and that the Seventh and Magnolia Street connection any an
all live stock tendered to it by the Southern Railway Company
388 in Kentucky and promptly switch, transfer, transport an
deliver the same to whomsoever consigned at the Bourbo
Stock Yards and its live stock depot in Louisville, Kentucky.

Plaintiff further states that the Louisville Railway Company i
Kentucky is ready, willing and able to furnish cars for any and al
shipments of live stock to persons in the eastern portion of the Cit
of Louisville, and on the lines of the said Louisville and Nashvill
Railroad Company if same will be received, switched, transferred
transported and delivered by the Louisville and Nashville Railroa
Company to the consignees at the Bourbon Stock Yards and the liv
stock depot of said Louisville and Nashville Railroad Company.

Wherefore plaintiff prays as heretofore and further that the de
fendant, Louisville and Nashville Railroad Company be by manda
tory order of injunction, required upon tender thereof to it by th
Southern Railway Company in Kentucky, at one of the points o

physical connection between the tracks of said Southern Rail-
389 way Company in Kentucky at Louisville, Kentucky, and the tracks of the said Louisville and Nashville Railroad Company and at the Seventh and Magnolia Streets connection, to receive and promptly transfer, switch, transport and deliver all live stock in car-load lots, or less quantities to whomsoever consigned at the Bourbon Stock Yards, and the live stock depot of the Louisville and Nashville Railroad Company, in Louisville Kentucky, and consigned by any person or persons partnership or corporation at Central Stock Yards, Kentucky; and that said Louisville and Nashville Railroad Company be restrained and enjoined from failing, neglecting or refusing to receive, switch, transfer, transport and deliver live stock to its live stock depot in Louisville, Kentucky, and to any and all other regularly established stations on its line when tendered and delivered to it by the Southern Railway Company in Kentucky at Louisville for delivery at the Bourbon Stock Yards, and its live stock depot at Louisville, Kentucky, or any depot and established station on its line.

390 Plaintiff further prays for damages as the nature of the case, and the facts herein may demand, for judgment against the defendant, Louisville and Nashville Railroad Company, for its costs herein expended and for all such further proper and equitable relief as the nature of the case may demand.

JAS. H. HAZELRIGG,
WM. M. SMITH,
DODD & DODD,
Attorneys for Plaintiff.

B. H. Hurt being duly sworn says that he is the President and chief officer of plaintiff, Central Stock Yards Company, and that the statements contained in the foregoing pleading are true as he verily believes.

B. H. HURT.

Subscribed and sworn to, before me, by B. H. Hurt this
391 10th day of January, 1902.
My commission expires the 14th day of Feb'y, 1902.

JNO. J. JACKMAN,
Notary Public, Jefferson Co., Ky.

392 At a Court held on the 11th day of January, 1902:

This action was set at rules by the plaintiff on the 6th inst.
Came the defendant by counsel and filed its answer herein.
Ordered that this action be and it is remanded to the rules.
Said answer filed herein on the 11th day of January, 1902, is as follows, to-wit:

393 Jefferson Circuit Court, Chancery Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Answer.

Defendant, the Louisville & Nashville Railroad Company, for answer herein denies that it is a common carrier of live stock although it admits that it carries a very large amount of live stock under special bills of lading or contracts covering that peculiar commodity.

It denies that any of its acts complained of in the petition with reference to the cars of stock therein referred to as having been shipped respectively by Mattingly & Beaven or W. S. Gambill or by D. E. Garrett or by W. A. Bell, were unlawful or unauthorized.

394 On the contrary it says that its actions in delivering the said stock were all in exact accordance with the bills of lading for said stock which it issued to said shippers and which were received by said shippers at the time said stock was shipped.

It denies that its agent did bill the car of live stock shipped by J. S. Brown in car No. 18570 to the Central Stock Yards Company at Central Stock Yards, Kentucky; or that it neglected or refused to deliver said car load of stock in accordance with the bill of lading issued therefor. On the contrary it says that the bill of lading issued for said stock required it to be delivered at Louisville, Ky., not at Central Stock Yards, Ky., and that it was delivered as provided by the said bill of lading.

Defendant denies that its delivery of any of said stock was unlawful or unauthorized or has greatly or at all damaged plaintiff, or is an unjust, unauthorized or illegal discrimination, or any character of

395 discrimination against plaintiff, or that unless defendant is required to make delivery as ordered great or irreparable injury or damage will result to plaintiff or its stock yard business.

Defendant has no knowledge nor information sufficient to form a belief as to whether or not plaintiff has invested several hundred thousands of dollars in this plant, or as to what amount it has invested therein. But it denies that plaintiff has connected therewith a large number of commission houses engaged in the purchase and sale of live stock, though it admits that there is some character of arrangement between plaintiff and some commission houses who do business at plaintiff's Stock Yards.

It has no knowledge nor information sufficient to form a belief as to whether or not a large number, or what number, of the customers of the said commission merchants engaged in business at plaintiff's Stock Yards, or of live stock dealers throughout the State of Kentucky or elsewhere have expressed the purpose of doing business at

the yards of plaintiff, or have endeavored to have stock con-
396 signed to plaintiff for sale through said commission houses, or for care or attention thereto by plaintiff.

It denies that it has unlawfully or without authority of law refused or failed to bill any live stock or transport the same.

It denies that any shippers, customers or patrons of plaintiff or of any commission merchants or any one, are required or compelled by defendant to consign their live stock to a Stock Yard other than that of plaintiff, or other than such as is desired by said shippers and live stock dealers; or that such shippers or any persons are required by defendant to consign their live stock to any Stock Yard; though defendant admits, as will be hereafter more fully explained, that it does deliver at its live stock depot in the City of Louisville, which is at the Bourbon Stock Yards, all live stock transported by it to the City of Louisville.

It denies that its conduct is arbitrary, unlawful or oppressive, or is a discrimination against plaintiff, or any shippers or dealers
397 in live stock; or will cause great or irreparable injury to plaintiff; or that it has been damaged in the sum of $300 or will be damaged in the sum of $50,000 or any other sum.

Paragraph II.

Further answering the amended petition herein, so far as not answered by the foregoing portion of this answer, defendant says that the statements of the plaintiff therein as to what this defendant is required to do in law and equity, are, it submits, mere conclusions of law which it is not necessary for defendant to answer.

It denies that it can, by reason of the points of physical connection referred to in the petition between its tracks and the tracks of the Southern Railway, without delay to its traffic or danger in the handling thereof, or inconvenience or expense or delay in return of empty cars, transport, switch or deilver, live stock to the Southern Railway Company in Kentucky in the cars of defendant for
398 delivery by the Southern Railway to plaintiff, or any one else at the Central Stock Yards Station; or that there was any custom of thus handling business at the time of the filing of the petition or of the amended petition, or that the same was being done from day to day by the Louisville & Nashville Railroad Company, or has ever been done except under the order of injunction herein. On the contrary it alleges that the doing of business in that way has occasioned it and will continue to occasion it, a great deal of inconvenience and delay and expense above what would be necessary if it should be permitted to conduct its business as it has heretofore conducted the same.

Paragraph III.

Further answering herein defendant says at a place, such as the City of Louisville, it is absolutely essential to the proper management and handling of business that a railroad company handling a

large amount of live stock, either bringing it to the Louisville
399 market or taking it from that market, should have a regular live stock depot, provided with facilities for handling and taking care of that peculiar species of property. Live stock need peculiar attention. They have to be fed and watered at regular intervals to keep them from suffering and preserve them in good condition. They are liable, when large number- of them are placed in cars, as is a necessity, to get down and be trampled upon, a liability which of course increases the longer they stay confined in one car or other place. Moreover, certain kinds of live stock suffer very greatly from extreme heat or extreme cold. In very hot weather it is of the greatest importance in handling such stock to unload them from cars as quickly as possible and throw water upon them in order to reduce their bodily heat and save their lives. The longer they stay in cars in which they have been transported, the more liable do they become to injury from any of the causes above mentioned.

On the other hand as to most dead freight, to-wit, all except certain kinds of perishable property, it can stand loaded in cars,
400 without material injury, and is not affected by the moving and shifting of cars, as living animals are.

Facts and considerations such as the foregoing make it necessary that there should be a difference between the manner of handling dead freight and the manner of handling live stock. And they make it essential that a railroad company, handling a large amount of live stock into or out of a peculiar market, such as Louisville, should have a regular live stock depot where prompt attention can be given to such live stock by men who are skilled in the handling of this peculiar character of property.

Many years ago, to wit, in 1880, which was at least twenty years before the establishment of the Stock Yards of the plaintiff, The Central Stock Yards Company, the Louisville & Nashville Railroad Company, in order to establish a live stock depot which would enable it to properly handle and care for live stock as above explained, did enter into a written agreement with the Bourbon Stock Yards
401 Company of the City of Louisville for a period of ten years from that date, which contract was afterwards superseded by a written contract between the said parties which took effect on August 1st, 1888 and continued by its terms for ten years from that date, and which last mentioned contract was afterwards extended by agreement in writing between said parties for the term of ten years from September 20th, 1898.

A copy of said written contract of 1888, and of the extension thereof, has been filed in this cause as an exhibit with the affidavit of M. H. Smith, and is hereby referred to as an exhibit with this answer.

The substance and effect of the said written contract was and is that the Louisville & Nashville Railroad Company established a live stock depot for the Louisville market at the Bourbon Stock Yards in Louisville, Ky. which yards were contiguous to the lines of the Louisville & Nashville Railroad Company, and agreed that it would

not establish or in any manner facilitate the establishment of
402 any other stock yard or stock depot in said City, and that it would deliver and cause to be delivered at the Bourbon Stock Yards, so far as it might legally do so, all live stock shipped over its road and consigned to the City of Louisville. And on the other hand by said contract the Bourbon Stock Yards Company agreed that it would maintain and keep its Stock Yards in good condition with sufficient and ample facilities for the handling of all live stock which should come to such yards, with proper conveniences for doing such business, such as are usual and customary, in the best conducted Stock Yards in this country, and that it would always keep on hand at such Yards a sufficient number of skilled workmen to perform this class of service, and generally to do such work and labor as is usually provided in stock yards of the best class; and that it would load and unload all live stock that might be brought to said yards, for which services the Louisville & Nashville Railroad Company agreed to pay said Stock Yards Company fifty cents per car. And the said Stock Yards Company further agreed, that all charges which it might make for keeping, feeding or caring for live stock
403 coming to its yards under that contract, either directly or indirectly, should be reasonable, and that it would not charge any more for keeping, feeding and caring for the live stock of its patrons than is charged for similar services or supplied by other Stock Yards in said City.

In other words, said Bourbon Stock Yards Company by said contract not only agreed to load and unload live stock and to place the same in the delivery pens when unloaded, for a certain rate to be paid by the Louisville & Nashville Railroad Company (but not by the shipper) but further agreed for the benefit of the public generally that the charges which it should make for keeping live stock after delivery, and for caring for the same and feeding the same, if the owners should choose to leave their stock at the Bourbon Stock Yards, should be reasonable.

When live stock is delivered at said live stock depot at the Bourbon Stock Yards, it is, without any charge to the owner, unloaded and held for the owner for a reasonable time to enable him to get
404 the stock, and either take it away, or arrange for its further care and maintenance. For the loading and unloading of such stock no charge whatever is made against the owner. It is true that after stock is delivered at the Bourbon Stock Yards, the owner has the privilege, if he chooses, to order the Bourbon Stock Yards Company to retain said stock for him, and to feed and care for it until he can sell it, or until he desires to take it away to some other point; but this is a matter entirely optional with the owner. He can leave it at these yards or take it away as he pleases. And the Louisville & Nashville Railroad Company in making the contract just mentioned took pains to secure an agreement on the part of the Bourbon Stock Yards Company as heretofore stated, that its charges for caring for such stock as might be left with it should be reasonable, and that its attention thereto should be proper.

Since the making of said original contract of 1880 between this defendant and the Bourbon Stock Yards Company it has been faithfully kept by both parties. The Bourbon Stock Yards Com-
405 pany has provided at the said Stock Yards ample facilities for the handling of all live stock which comes to the Louisville market, and has also provided and maintained there an ample force of men skilled in the handling of such property, and has carefully and efficiently handled the said live stock; and this defendant on its part has always insisted and demanded that all deliveries of live stock by it or to it for the Louisville market should be at its live stock depot at the Bourbon Stock Yards. On the faith of said contracts both parties thereto, to wit, the Louisville & Nashville Railroad Company and the Bourbon Stock Yards Company have expended large sums of money. The Louisville & Nashville Railroad Company has arranged its tracks, and many side tracks, so as to facilitate in every possible way the prompt delivery of live stock at the said Bourbon Stock Yards; and the Bourbon Stock Yards Company had erected at great cost ample facilities for the handling at one time of large amounts of stock, and for giving them
406 that peculiar attention which their nature requires; and has provided not only pens and other facilities for ordinary live stock in healthy condition, but has provided entirely separate pens known as "Quarantine Pens," for live stock coming from those districts which are required by the laws of the United States to be kept separate from live stock coming from other districts, all of which has cost large sums of money.

It would greatly disarrange the business of the Louisville & Nashville Railroad Company and be very burdensome to it to be compelled to handle live stock for the Louisville market in the manner in which effort is now being made to compel it to do, to wit, by delivering live stock to the Southern Railway Company to be carried to the Central Stock Yards. As the live stock business is now done all such live stock coming to the City of Louisville over the lines of the Louisville & Nashville Railroad Company is taken immediately to one place, to wit, defendant's live stock depot at the Bourbon Stock Yards. When such live stock comes into the City from the
407 East and reaches defendant's freight yards in the eastern part of the city, it is then very close to defendant's live stock depot, to wit, the Bourbon Stock Yards, and can be quickly and conveniently carried to the same. When such live stock comes to the city from the South, and reaches defendant's freight yards in the southern portion of the city, all of the live stock from said yards can be quickly transported by one switch engine from said yards at South Louisville to defendant's live stock depot at the Bourbon Stock Yards. But if defendant should be compelled to deliver live stock not only at its live stock depot, but also to a connection with the Southern Railway, it would necessitate a handling in an entirely different manner from that now prevailing. It would be necessary for defendant when a train containing live stock reaches either East Louisville or South Louisville, to separate the cars containing live

stock destined for the Central Stock Yards from those containing live stock destined for the Bourbon Stock Yards, which is defend-
ant's live stock depot, which cars after being thus separated
408 would have to be handled by separate engines and crews. If the cars already in the South Louisville Yards, then those destined for the Bourbon Stock Yards will be taken by one switch engine and crew in a northeasterly direction over the tracks ordinarily known as the Railway Transfer tracks to the Bourbon Stock Yards, while those destined for the Central Stock Yards would have to be taken by a different engine and crew over different tracks, to wit, the main tracks leading northwardly toward defendant's passenger and freight depots, until they should reach a connection with the Southern Railway at Seventh and Magnolia. And if the cars were already in the East Louisville Yards, it would be necessary for one engine and crew to take the cars destined for the Bourbon Stock Yards to the Bourbon Stock Yards, while a different engine and crew would take the cars destined to the Central Stock Yards in a southwesterly direction over the track known as the Transfer track
to South Louisville, whence another engine and crew would
409 take the same northwardly from South Louisville over defendant's main tracks to a connection with the Southern Railway at Seventh and Magnolia. This method of handling said live stock would impose great additional labor and cost upon defendant.

Defendant says furthermore that when the plaintiff established its Stock Yards where they are now established it knew in advance of the existence of the contract between this defendant and the Bourbon Stock Yards Company, and knew, and had been informed by this defendant, that this defendant could not and would not deliver stock to it or to any other person or corporation for it, at any other place than at defendant's live stock depot, to wit, the Bourbon Stock Yards. And whatever money the plaintiff has invested in its said Stock Yards it invested with knowledge of this defendant's rights and obligations aforesaid.

Paragraph IV.

Defendant further says that a large part of the stock which
410 comes over its lines in Kentucky *in* stock which has come from points without Kentucky to points within Kentucky, and the transportation of which is interstate commerce, and it submits that the State of Kentucky has no power to regulate such commerce, or to regulate the manner in which this defendant shall deliver the subjects of such commerce. And so far as the constitution or statutes of Kentucky may be construed as requiring this defendant to deliver to the Southern Railway in Kentucky live stock brought by defendant to Louisville by continuous shipment from points without Kentucky, and so far as they may be otherwise construed to regulate the manner in which this defendant shall handle or deliver such live stock, being subjects of interstate commerce, the said provisions are void because in contravention of the Constitution

of the United States which vests in the Congress of the United States the power to regulate commerce among the several States.

Paragraph V.

411 Defendant says furthermore that if the said Constitution and statutory provisions by the State of Kentucky can be properly construed, and are properly construed as requiring this defendant to deliver to other railroad companies, for use by them, the cars or other property of this defendant, against its will and without its consent, they are attempts by the State of Kentucky to deprive this defendant of its property without due process of law, and are contrary to the provisions of the Constitution of the United States and especially to the provisions of the Fourteenth Amendment thereof and are void.

Wherefore defendant prays to be hence dismissed and for its costs herein.

GIBSON, MARSHALL & GIBSON,
HELM, BRUCE & HELM,
Att'ys for Def't.

Walker D. Hines says he is the vice president of the defendant the Louisville & Nashville Railroad Company, and its Chief Officer now in this State; and that he believes the statements in the foregoing answer are true.

412 WALKER D. HINES.

Subscribed and sworn to before me by Walker D. Hines this January 10th, 1902.

My commission expires with the present session of the Kentucky Senate.

HUSTON QUIN,
N. P., J. C., Ky.

413 At a Court held on the 6th day of February, 1902:

Came plaintiff by counsel and filed written notice herein.

Thereupon filed a demurrer to the answer filed on January 11th, 1902, herein:

And by agreement of parties by counsel ordered that this action be and is hereby assigned to the 13th inst. for hearing on said demurrer.

Said notice and demurrer filed herein on the 6th day of February, 1902, are as follows, to-wit:

414 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO., Defendant.

Notice.

To the Louisville and Nashville Railroad Company, or Helm, Bruce and Helm, its attorneys of record:

You are hereby notified that on Thursday, February the 6th, 1902, in the Chancery Division of the Jefferson Circuit Court, at or about the hour of ten o'clock A. M., or as soon thereafter as plaintiff in the above styled action can be heard, the plaintiff will move the Court to file herein a general demurrer to the answer of the defendant, Louisville & Nashville Railroad Company, and to each paragraph thereof be immediately taken up and considered, or submitted upon the said demurrers.

DODD AND DODD,
W. M. SMITH,
Attorneys for Plaintiff.

415 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Demurrer.

The Plaintiff demurs to the answer as a whole, filed herein on the 11th day of January, 1902, and to each paragraph thereof separately—numbered 1 to 5 inclusive—because it says that neither the said answer as a whole, or any paragraph thereof make denials or state facts sufficient to constitute any defense to or avoidance of the cause of action set out in the petition or amended petitions herein.

W. M. SMITH,
DODD AND DODD,
Attorneys for Plaintiff.

416 At a Court held on the 13th day of February, 1902:

Came defendant, by counsel, and tendered and moved the Court to file an amended answer herein to which the plaintiff objects, and the Court being advised, ordered that said motion be and is sustained, and said amended answer be and is now filed; to which the plaintiff excepts.

And on further motion of said defendant, ordered that plaintiff's demurrer to its answer be and is taken as a demurrer to its amended answer herein.

And this action having been heard on the demurrer to the answer and amended answer, ordered that this action be and is submitted on said demurrers.

Said amended answer filed herein on the 13th day of February, 1902, is as follows, to-wit:

417 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

The defendant for amendment to its answer herein, and especially to the fourth paragraph thereof, says that since the institution of this action, and since the filing of the defendant's answer herein, the plaintiff, to-wit: The Central Stock Yards Company, has instituted a suit in equity in the United States Circuit Court for the Western District of Kentucky against this defendant, in which suit the said Central Stock Yards Company is the sole complainant and this defendant the Louisville and Nashville Railroad Company is the sole defendant, in which suit the said complainant makes in effect the same allegations as are made in its petition in this case, so
418 far as they relate to live stock or shipments of live stock or other commodities transported, or desired to be transported, from points outside of Kentucky to points within Kentucky, and in which suit complainant as to the character of business just mentioned, to-wit: interstate business, seeks against this defendant exactly the same relief which it seeks herein in this Court, and bases its claim for such relief in said Federal Court both on the provisions of the federal act ordinarily known as the Interstate Commerce Act, and also on the provisions of the Constitution of Kentucky. Said suit in the Federal Court is between the same parties as this suit, and is for the same alleged cause of action, so far as this suit in this Court relates to the live stock or other commodities transported or to be transported, or desired to be transported, from points outside of Kentucky to points within Kentucky, and seeks the same relief as to such as is sought in this case in this Court.

Defendant says the bill of complaint in said suit in said
419 Federal Court has lately been dismissed; but from the decree dismissing same an appeal has been taken and perfected to the United States Circuit Court of Appeal for the Sixth Circuit, where it is now pending undetermined.

Defendant says it is not just or equitable that it should be compelled to defend two suits in two different Courts in the same State at the same time for the same alleged cause of action, and it therefore pleads the pendency of said suit in the Federal Court in abatement of the suit in this Court, so far as the plaintiffs in the suit in this Court assert a cause of action on account, or seek relief on account of live stock or other property transported or to be transported

from points outside of Kentucky to points within Kentucky, and prays that to such extent the present suit in this Court be abated.

HELM, BRUCE AND HELM,
Attorneys for Defendant.

420 M. H. Smith says he is the President of the Louisville and Nashville Railroad Company, and its principal officer in this State, and he believes the statements of the foregoing amendment to the answer are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith, this 13th day of February, 1902.

My commission expires the 27th day of January, 1906.

HUSTON QUIN,
N. P., J. C., Ky.

421 At a Court held on the 29th day of March, 1902:

The Court being advised, endorsed an opinion on the wrapper of the petition which is ordered to be and is now filed and made part of the record herein.

And in pursuance of said opinion it is ordered that the demurrer of the plaintiff to the first and second paragraphs of the answer of defendant herein be and the same is, as to each of said paragraphs, overruled, to which the plaintiff excepts.

And it is further ordered that the demurrer of the plaintiff to the third paragraph of the said answer of defendant and the same is sustained; to which defendant excepts.

And further ordered that the demurrer to the fourth paragraph of the said answer of the defendant, or so much thereof as is contained in the amendment thereto filed herein February 13th, 1902, that attempts to plead the pendency of the suit between the same parties hereto in the Federal Court in bar of this Action, be and the
422 same is sustained, but the said demurrer to the said fourth paragraph as originally filed and to so much thereof as presents the question Inter-State Commerce in the abstract, is for the present overruled, and reserved for final hearing upon the said question of inter-state shipments presented therein.

To so much of the ruling of the Court as is adverse to the defendant, it excepts and to so much thereof as is adverse to plaintiff and fails to sustain the demurrer to the entire paragraph, plaintiff excepts.

And further ordered that the demurrer of the plaintiff to the fifth paragraph of the said answer of the defendant, be and the same is sustained, to which defendant excepts.

Said opinion filed herein on the 29th day of March, 1902, is as follows, to-wit:

423 1902, March 29:

(Submitted upon demurrer to answer as amended.)

1 & 2. The first and second paragraphs of the answer are chiefly conclusions of law, which are, or may be disposed of by the allega-

tions of fact, etc., in other paragraphs of the answer, standing alone, however, and being traversed largely, the better practice is to overrule the demurrers thereto and it will be so ordered.

3. The third paragraph raises by answer the chief question of the case which was tried upon the restraining order or injunction and which was subsequently upheld by Judge Burnham. The first written opinion filed herein on November —, 1901, carefully considered this question, and counsel for defendant have not again urged it upon this argument, treating it as settled so far as this hearing is concerned. There being nothing new offered the former ruling will be adhered to, and the demurrer to the third paragraph of the answer will be sustained.

424 4. Treating the fourth paragraph and the amendment as one paragraph, the demurrer will have to be sustained, as a Judgt. in one Court will not be a satisfaction or bar to a similar Judgt. in the other Court. If it be an action at all it is a continuing cause of action to be enforced by any Court at any time regardless from the view of *res judicator*, as to what some other Court may have done in a particular case. A decision of another Court would be authoritative and persuasive, but not a bar as would be the case of a judgment for money upon a contract or for a tort as was the Henderson Case 86 Ky. The question of interstate commerce is pleaded in the abstract. Under this state of the pleading the demurrer to this fourth paragraph will be sustained to so much thereof as is contained in the amendment, and reserved for final hearing upon the question of interstate shipments.

If, however, counsel wish a ruling upon the abstract ques-
425 tion as now prescribed, without regard to any specific facts that may hereafter appear, I will pass upon it.

5. The demurrer to the 5th paragraph will be sustained.

SHACKELFORD MILLER, *Judge.*

At a Court held on the 1st day of April, 1902:

Notice being waived:

It appearing that some of the original papers herein are necessary in an investigation to be had before the Inter-state Commerce commission, on motion of plaintiff by counsel, ordered that leave be and is given plaintiff by its attorneys to withdraw the original papers herein for the purpose of such investigation to be had, the said original papers to be returned to the Clerk of this Court.

426 At a Court held on the 15th day of May, 1902:

Notice being waived, came the defendant, by counsel and filed second amendment to answer herein.

Said second amendment to answer filed herein on the 15th day of May, 1902, is as follows, to-wit:

427 Jefferson Circuit Court, Chancery Division No. 1.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Second Amendment to Answer.

Defendant, the Louisville & Nashville Railroad Company for amendment to its answer herein says:

Par. 1. At the time defendant's original answer herein was prepared and verified it had no knowledge that the second amended petition herein had been filed, and did not know of the existence of said pleading until a few moments before defendant's answer was filed. Said answer for that reason was not made responsive to the said second amended petition.

Defendant for answer to plaintiff's second amended petition denies that the Southern Railway Company in Kentucky has
428 at Louisville, Kentucky three points of physical connection between its tracks and the tracks of the defendant, Louisville & Nashville Railroad Company.

It denies that what is referred to by plaintiff as the "Bergen and Meehan switch or connection" is a physical connection between the tracks of the Southern Railway Company and the Louisville & Nashville Railroad Company. It has no knowledge or information sufficient to form a belief as to whether or not the Southern Railway Company owns any part of the said switch, or if any part then as to how much of same it owns; but it denies that the Louisville and Nashville Railroad Company has the right to or does use any part of said siding or switch, which belongs to the said Bergen and Meehan, except for the purpose of delivering cars to said Bergen and Meehan or receiving cars from them. Said switch is the private property of said Bergen and Meehan, and this defendant has no right to use the same and does not use it except as aforesaid.

As to what is called by plaintiff's petition "The Fourth Avenue connection" between the tracks of the Southern Railway Com-
429 pany and those of the Louisville and Nashville Railroad Company it is true that there is a physical connection at that point; but while there is such physical connection between the tracks of the Louisville and Nashville Railroad Company and those of the Southern Railway Company at said crossing, which is at Fourth and G. streets in the City of Louisville, yet this is a place and a character of crossing where it would not only be impracticable but dangerous to make a regular place of interchanging live stock cars between said two railroad Companies, if such interchange would be a matter of frequent occurrence. This is a point where the main tracks of the Louisville and Nashville Railroad Company, and the main track of the Southern Railway Company, and the tracks of the Louisville Railway Company (which is an electric street car line) all cross each other. And but a few feet east of this point of crossing is a

public street paved with asphalt, while just a few feet west of this point of crossing is a passenger station on the line of the Southern Railway, at which many passengers get on and off the passenger car- of the Southern Railway. Thus passengers getting off of
430 such cars of the Southern Railway come immediately across the said point of intersection between the tracks of the Louisville and Nashville Railroad Company and those of the Southern Railway, to a point where they can take the cars of the Louisville Railway Company to be carried into the City of Louisville; while, on the other hand persons intending to leave the City, from said passenger station go out on the Fourth Street cars of the Louisville Railway to the said point of crossing, and there alight, walk over the crossing to the aforesaid passenger station of the Southern Railway, and there take its cars. Furthermore there are no side tracks at the said crossing or intersection upon which cars can be set off by the Louisville and Nashville Railroad Company to await their being taken up by the Southern Railway Company, or vice versa. And if an attempt should be made to exchange cars at that point it would be necessary to leave those cars either on the main tracks of the Louisville and Nashville Railroad Company over which its regular
431 passenger trains travel, or on the main track which is a single track of the Southern Railway Company, over which the passenger trains regularly travel. It would therefore be both impracticable and dangerous for the reasons heretofore given, to attempt to make said Fourth and G street crossing a regular place of interchange of live stock cars between the Louisville and Nashville Railroad Company and the Southern Railway Company.

As to what is called by plaintiff the Seventh and Magnolia Avenue connection defendant denies that there is a physical connection at that point between the tracks of the Louisville & Nashville Railroad Company and any tracks owned by the Southern Railway Company.

Defendant denies that sales of live stock are daily made at plaintiff's stock yards. It denies that a large number of brokerage and commission firms are doing business or have offices at said yards. It has no knowledge or information sufficient to form a belief as to whether or not such commission firms as do business there
432 have many customers from whom they daily or at all at plaintiff's yards make purchases of live stock. It denies that many persons who carry on the business of packers and butchers along the line of the Louisville and Nashville Railroad Company in the eastern portion of the City of Louisville daily or at all make purchases of live stock through commission firms doing business at plaintiff's yards, or make purchases of live stock at plaintiff's yards in any manner. It denies that such packers and butchers, if any, as do receive live stock purchased at plaintiff's yards can receive the same only over the Southern Railway and the Louisville & Nashville Railroad.

Defendant denies that prior to the institution of this action or the filing of plaintiff's second amended petition therein it had been receiving, switching, transferring, transporting or delivering live stock originating at the Central Stock Yards destined to persons at the

Bourbon Stock Yards, except that for a very short time after
433 the granting of the preliminary injunction in this case such business was done through the misunderstanding on the part of some of the employés of defendant as to the scope and effect of said injunction. Said employés did said business for a short time as aforesaid because they understood that said injunction required it to be done.

Defendant denies that at the time of filing said second amended petition it was receiving from day to day or at all, when or as offered, live stock destined to the Bourbon Stock Yards from other points or stations on the line of the Southern Railway other than Central Stock Yards except as hereinafter more fully explained.

Defendant denies that there are a number of or any packers or butchers in the eastern portion of the City of Louisville who can be reached only over the lines of this defendant and who are desirous of making purchases of live stock at plaintiff's yards or through live stock commission firm- thereat; or that the distance between plaintiff's yards and the said packing establishments in the eastern
434 portion of the City of Louisville is too great to have the said live stock removed by being driven through the streets, or that their removal for such distance through the streets would be dangerous to pedestrians or the public generally.

Defendant has no knowledge or information sufficient to form a belief as to whether or not packers and butchers in the Eastern portion of the City of Louisville will not make any purchases at plaintiff's yards unless they can have their purchases made thereat, delivered at the Bourbon Stock Yards.

Defendant denies that its refusal to receive, switch, transfer and make delivery of live stock originating from Central Stock Yards, Kentucky was or is arbitrary, unlawful or oppressive.

It has no knowledge or information sufficient to form a belief as to whether or not the Southern Railway Company is ready, willing or able to furnish cars for any and all establishments of live stock to persons in the Eastern portion of the City of Louisville on the
435 lines of the Louisville and Nashville Railroad Company, if same will be received, switched, transferred, transported or delivered by the Louisville and Nashville Railroad Company to the consignees at the Bourbon Stock Yards.

Par. 2. Further answering said second amended petition defendant says:

The Bourbon Stock Yards in the eastern portion of the City of Louisville constitute the live stock depot for Louisville of the defendant the Louisville and Nashville Railroad Company, and are located in said City at a point of convenient access to persons engaged in the live stock business or in the business of butchering and packing live stock.

The Central Stock Yards constitute the live stock depot for Louisville of the Southern Railway Company, which is a competitor for business with this defendant the Louisville and Nashville Railroad Company. Said Central Stock Yards are located just outside of the limits of the City of Louisville in a place very inconvenient of ac-

cess and removed a very considerable distance from that portion of the City of Louisville in which the live stock and meat packing interests and establishments are mainly located. And the sole
436 purpose of the said second amended petition herein is to compel this defendant, for a mere nominal charge, which is less than the actual cost of doing the work, to turn over the use of its terminal facilities including its tracks and depot in the City of Louisville to the use of a competitor, and to compel this defendant to do a mere transfer business in transferring live stock from the remote and inconvenient live stock depot of the Southern Railway to the convenient and centrally located depot of this defendant the Louisville and Nashville Railroad Company.

This defendant is not, either under its charter or practice a transfer company; and its terminal properties in the City of Louisville were not acquired with the end in view, or for the purpose, of performing such service as those above described. For a great many years the Louisville and Nashville Railroad Company has been from time to time acquiring terminal facilities in the City of Louisville. It has built passenger stations and dead freight stations, and
437 did long prior to 1880 establish a live stock station in said City at the Bourbon Stock Yards. It has also acquired in various places in said City rights of Way and constructed Railroad tracks running in different directions within said City. All of these terminals have cost it an enormous sum of money, several hundred thousand dollars. And they have all been acquired merely as adjuncts or auxiliaries to the business of the Louisville and Nashville Railroad Company as a corporation engaged in the business of carrying freight and passengers as the business of a railroad Company is ordinarily understood by common usage, to-wit, the business of carrying over long distances and between regular stations. Commodities and convenient terminal facilities such as depots, yards, side tracks, &c. add very greatly to the power of a railroad company to attract to itself business of the character aforesaid, and enable it to handle such busines with very much greater profit than can be done in the absence of such terminal facilities. It is for this reason that all railroad companies seek as far as they can to acquire
438 terminal facilities; and it has been for this reason only that the Louisville and Nashville Railroad Company has acquired the terminal facilities which it now possesses in the City of Louisville. It never however acquired its depots in that City, either its dead freight depots, or live stock depots, for use as warehouses in said city for the accommodation of those who might desire to store commodities with it. Neither did it acquire its terminal tracks in that City for the purpose of acting in the capacity of what is ordinarily called a transfer company, to-wit, a company simply transferring commodities from one point to another point in said city. This is business which is ordinarily done by what is called a Transfer Company or a Belt Line Company, and is recognized as a different character of business from the business done by an ordinary railroad company such as defendant is.

To compel the Louisville & Nashville Railroad Company to act

as a mere transfer and warehouse company would be practically to turn over to all other railroad companies and persons the
439 costly and valuable terminal facilities of said Louisville & Nashville Railroad Company; and thus to give to another railroad company entering the City of Louisville and having no terminal facilities at all, or only inferior terminals, the use of the terminals of this defendant which have been acquired as aforesaid through long years and at great cost; and would be to deprive this defendant of its property without due process of law, contrary to the provisions of the Constitution of the United States for such cases made and provided, and especially to the Fourteenth Amendment thereof.

To compel the Louisville and Nashville Railroad Company to do transfer business on its tracks in the City of Louisville would not only require it to do a character of business which it is not engaged in, but, by throwing open its terminals to such service, and by requiring it to perform thereon such service, would greatly impair the value of its terminals for the purposes for which they were acquired, by crowding them with traffic having no legitimate connection with defendant's business as a railroad company, to-wit, by crowding it with traffic between other railroad companies and industries in the City of Louisville, or between industries and industries in said
440 City and would thus greatly impede and delay and incommode the conduct of defendant's own legitimate railroad business over and by means of its own terminals which were secured by it as heretofore explained for the purpose of attracting and facilitating the handling of such business. Furthermore to turn over the use of said facilities to any one desiring to use them, as now demanded by plaintiff herein, and to compel defendant to perform such transfer services on its terminal properties for the benefit of any one who might demand such services as plaintiff now does, would actually take away from defendant a large part of the business which it now does, and which it is now enabled to do by reason of having these terminal facilities connected with its line leading into and out of the City of Louisville; for whereas persons now located upon the terminals of the Louisville & Nashville Railroad Company in the City of Louisville generally ship and receive their freight by the lines of the Louisville & Nashville Railroad Company entering the City of Louisville, because of the convenience in reaching those lines
441 by means of said terminals, yet if those terminals and defendant's services could be made use of to reach the lines of other railroad companies entering the City of Louisville, such shippers would in many instances give their business to such railroad company owning such other lines, whereas they now give it to this defendant.

To induce persons to locate industries on the lines of defendant in Louisville (the natural and usual result of which is to bring business to defendant's main lines leading into Louisville) it has for the accommodation of persons thus locating on its own lines switched cars to them coming into Louisville over other lines when coming from points at which the defendant does not compete for business.

This however has been done purely as a voluntary matter for the accommodation of defendant's own patrons, and as contributory to the upbuilding of defendant's regular business as a railroad company.

It is true also that where live stock has come from a territory into which the tracks of the Louisville & Nashville Railroad Company do not run and in which it therefore does not compete for business, and where such live stock from such non-competitive points has
442 been carried to Louisville by other railroad companies, the Louisville & Nashville Railroad has heretofore received such live stock from said railroad company and carried it to defendant's live stock depot at the Bourbon Stock Yards, because as to stock thus shipped to the Louisville market and carried to defendant's said live stock depot, there was always a probability that when this stock was thus sold at the Bourbon Stock Yards it would again be transported out of this market and over the lines of the Louisville & Nashville Railroad leading out of the City of Louisville to the east and in other directions, from which business a profit was made by the Louisville & Nashville Railroad Company in the conduct of its regular railroad business. This character of business, to-wit, live stock coming over other lines from points at which the Louisville & Nashville Railroad Company did not compete for business, was done for the reason and only for the reason just explained, and because it was a source of large profit to it in the conduct of its regular business as a railroad company; for in this way by means of its ter-
443 minal facilities it gathered in business to its depot which would probably go out again, and a great part of which did go out again, over its own lines leading out of the City of Louisville. This character of business it did, not because required by law to do it, but as a voluntary act believing by it to be contributary merely to its regular business as a railroad company. And it was on account of the considerations just mentioned that defendant fixed its charges for performing such services as those just mentioned, to wit, transferring from other railroads entering the city to its live stock depot, where such stock came from non-competitive points. And said charges as thus fixed are less than actual cost to this defendant performing the services described, but were adopted because the service led to other business which was and is profitable to defendant, to-wit, the regular carriage of live stock over its lines of railroad entering and leaving the City of Louisville. But defendant says that live stock which has been brought to the Louisville
444 market by the Southern Railway or by any other line of railroad entering the City of Louisville, and deliver*ing* at the Central Stock Yards and there sold to a butcher or packer doing business in the City of Louisville, stops in the City of Louisville; and if defendant should be required to give the use of its terminals and to perform the service of a mere transfer company or delivery company in transferring such live stock to defendant's live stock depot at the Bourbon Stock Yards for the convenience of butchers and packers whose establishments are near the Bourbon Stock Yards, there would be no chance of defendant getting a haul of said stock

out of the City of Louisville over defendant's lines or to make the profit which is incident to such haul, and would receive no compensation either direct or indirect for the use of its terminals and for its service than the mere nominal switching charge heretofore mentioned which, as heretofore said is less than the actual cost to defendant of performing the services.

445 To grant the relief prayed for in plaintiff's petition would be to deprive defendant the Louisville and Nashville Railroad Company of its property without due process of law contrary to the provisions of the Constitution of the United States and especially to the 14th Amendment thereof.

Par. 3. Defendant further says it is a corporation created under and by the laws of the State of Kentucky by an act entitled, "An act to charter the Louisville and Nashville Railroad Company," approved March 5th, 1850 (Acts 1849-50, P. 427) which Act contained among other provisions the following, to-wit:

"That it shall not be lawful for any other company, or any other person or persons to travel upon or use any of the roads of said company, or to transport persons or property thereon without the license and permission of the President and Directors thereof." (Sec. 18.)

446 And defendant says further that by an Act amending its charter entitled "An Act to amend the charter of the Louisville and Nashville Railroad Company," approved January 17th, 1856, it was authorized to purchase and hold any road constructed by another company; and it did long prior to the institution of this action purchase the road and all the rights, properties, privileges, immunities and franchises (except the franchise to be a corporation) of the Louisville, Cincinnati and Lexington Railway Company, which were conveyed to defendant by the last named company by a deed dated November 5th, 1881, which is recordel in Deed Book 245 Page 1 of the Jefferson County Clerk's Office.

Defendant further says that said Louisville, Cincinnati and Lexington Railway Company had previously acquired said road and properties from the Louisville, Cincinnati and Lexington Railroad Company and others through a deed by Robert Cochranas Commissioner of the Louisville Chancery Court dated November 9th, 1877, and recorded in Deed Book 213 page 301 in the Jefferson County Clerk's Office, by which purchase and conveyance said Louisville, Cincinanti and Lexington Railway Company acquired all the rights,

447 properties, privileges, immunities, and franchises of the Louisville, Cincinnati and Lexington Railroad Company.

Said Louisville, Cincinnati and Lexington Railroad Company at the time of said conveyance was simply the successor, under a change in name, of the Louisville and Frankfort Railroad Company, with all the rights, franchises, powers, privileges, immunities and properties of said Louisville and Frankfort Railroad Company, which last named Company was created by an Act entitled "An Act to incorporate the Licking & Lexington Railroad Company, and the Louisville & Frankfort Railroad Company," approved March 1st, 1847, and which act contained among others the following provisions, to-wit:

"It shall not be lawful for any other company or any other person or persons whatsoever, to travel upon or use any of the roads of said company or to transport persons or merchandise or produce of any description whatsoever along said roads or any of them, without the license or permission of the President and Directors of said Company" (See Acts of 1846-7 page- 41 and 54, Section 44).

448 And defendant says it is now vested with all the rights, powers, privileges, immunities and franchises granted and conferred and acquired under and by its own original charter and the amendments thereof, and under and by the said charter of the Louisville and Frankfort Railroad Company, including the benefit of the provisions heretofore quoted in this answer.

Defendant says that in order to transfer a car from any connection which it has in the City of Louisville with the Southern Railway to the Bourbon Stock Yards it is necessary to use both its own original road and tracks acquired under its original charter and also the road and tracks acquired by its purchase aforesaid from the Louisville Cincinnati & Lexington Railroad Company.

Defendant alleges and submits that the aforesaid charters and charter provisions constitute contracts between this defendant and the State of Kentucky by which it is exempted from being com-

449 pelled against its consent to form business connections with the Southern Railway Company, or to receive cars from said Southern Railway Company upon the tracks of this defendant to be transported over said defendant's tracks as plaintiff herein seeks to require. And if section 213 of the Constitution of Kentucky, or any other provision of the Constitution or of the Statutes of Kentucky *or* properly construed as requiring this defendant to make the connection and allow the use of its tracks sought by plaintiff herein, then such constitutional or statutory provision is an attempt on the part of the State of Kentucky to pass an act impairing the obligation of the contract between the Louisville & Nashville Railroad Company and the State of Kentucky, contrary to the provisions of the Constitution of the United States on this subject, and is therefore void.

Par. 4. Defendant for further amendment to its answer herein as responsive to plaintiff's original and first amended petition says:

That plaintiff seeks by this action and by its original petition herein to require defendant the Louisville & Nashville Rail-

450 road Company to give up defendant's cars in which it has brought live stock to the City of Louisville and to give such cars containing such live stock into the possession and control of the Southern Railway Company to be used by the latter company for the transportation of such live stock to a point on the line of the Southern Railway. But defendant says that the said cars are its property, and are very valuable property and the defendant has constant need for them and constant use for them in the transportation of live stock over defendant's own line of railroad, and out of which use it can and does make a profit. Defendant says it is true that it does sometimes as a voluntary matter allow its live stock cars to pass from its possession into the possession of other railroad companies and it is true that railroad companies other than defendant do

sometimes permit their cars to pass out of their possession and into the possession of still other railroad companies; but defendant says this is a matter which is and always has been entirely regu-
451 lated by the business judgment and discretion of the railroad company owning the cars, including this defendant. This defendant never has allowed its live stock cars or any of its freight cars to go off of its line of road and out of its possession as a matter of course, or on demand either of other railroad companies or shippers or consignors or consignees of live stock or freight of any character; but has always exercised the right of saying and determining when cars belonging to defendant should go off of its lines and out of its possession to the lines or into the possession of others, and when they should not thus go. And so, as to receiving cars from other companies, this defendant has always exercised the right of determining for itself whether it would or would not receive the cars of other companies upon its lines of railroad. In other words, while defendant has often exchanged cars with other companies, this has not been a matter of right or demand, but has been a matter of volition and discretion on part of this defendant, which have been governed and controlled at different times by different facts and circum-
452 stances and conditions as they have existed and varied from time to time. And so railroad companies other than plaintiff do now, and have always likewise exercised the right of saying and determining when they would and when they would not exchange cars with other railroad companies, either by delivering their cars to other companies or by receiving the cars of other companies upon their lines, and such right on the part of a railroad company is absolutely necessary for the protection and proper handling of traffic on its own line and is indispensible for its own protection and the proper operation of its railroad and to the proper performance of the duties and services which it owes the public as a common carrier.

And defendant says that to require it to give up its cars to the Southern Railway Company for use by the latter company in transporting live stock or freight is to deprive it of its property without due process of law, contrary to the provisions of the constitution of the United States, and especially to the Fourteen Amendment
453 thereof; and if the provision of the Constitution of Kentucky or of any Statute of the State of Kentucky, when properly construed, do purport to require this defendant to give its cars to the Southern Railway Company, or to any other person, to be used by such other railway company or other person, against the will and without the consent of this defendant, then such constitutional or statutory provision is an attempt to deprive this defendant of its property without due process of law contrary to the provisions of the Constitution of the United States, and especially of the Fourteenth Amendment thereof and is void.

Wherefore defendant prays that plaintiff's petition as amended be dismissed, and for defendant's costs herein expended.

HELM, BRUCE & HELM,
Attorneys for Def't L. & N. R. Co.

Walker D. Hines says he is the first Vice President of defendant the Louisville & Nashville Railroad Company and its chief
454 officer in this State and that he believes the statements of the foregoing pleading are true.

WALKER D. HINES.

Subscribed and sworn to before me by Walker D. Hines this 12th day of May, 1902.

My commission expires Jany. 29, 1906.

G. W. B. OLMSTEAD,
Notary Public, Jeff. Co., Ky.

455 At a Court held on the 24th day of May, 1902:

Notice being waived:

Came plaintiff, by counsel, and filed a reply herein.

Notice being waived:

Came again plaintiff and filed a demurrer to the second, third and fourth paragraphs of defendant's second amended answer herein, and to each of said paragraphs separately.

And it is ordered that said demurrer be and it is submitted.

Said reply and demurrer filed herein on the 24th day of May, 1902, are as follows, to-wit:

456 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Reply.

The plaintiff for reply to so much of the answer of the defendant herein as it is advised it is necessary to make reply to, for its reply to the first paragraph of the said answer says it is not true, and it denies that the actions and conduct of the defendant in making delivery of livestock to Mattingly and Beavan, or W. S. Gambill, or D. E. Garrett, or A. W. Bell was in exact accordance, or at all in accordance with the bills of lading for said livestock to — is due to said parties; and it denies that the bill of lading issued to J. J. Brown for car No. 19570 required that the said livestock should be delivered at
457 Louisville, Kentucky, or otherwise than at Central Stock Yards, Kentucky, via Southern Railway Company at Louisville, and it denies that the said car load of live stock so shipped by the said J. J. Brown was delivered by defendant as provided in its bill of lading.

Paragraph 2.

For reply to the second paragraph of the said answer, it denies that the doing of business on the part of defendant in the manner required by the Constitution and laws of the State of Kentucky, and by the orders of this Court herein, has occasioned, or would occasion

or will continue to occasion to the defendant a great deal of inconvenience or any inconvenience, or delay, or expense, or any inconvenience or expense above what would be necessary if defendant should make deliveries of livestock accordingly as it may wish, or may have heretofore made deliveries of livestock.

Paragraph 3.

For reply to the fourth paragraph of the said answer plain-
458 tiff says that it is true what a considerable quantity of live-stock reaches Louisville, Kentucky, over the lines of the defendant which comes from points without Kentucky, but it denies that the State of Kentucky has no power to regulate the delivery of such commerce after it reaches Louisville, Kentucky, or that the State of Kentucky has no power to regulate the manner in which the defendant shall perform its duties to the public and shippers in making delivery of the subjects of commerce.

It denies that the Constitution or statutes of Kentucky in requiring that the defendant deliver at points of physical connection between its tracks and the tracks of other common carriers for delivery by such connection common carriers as destined, or desired by owners of live stock are void, or in contravention of the Constitution of the United States, or otherwise than in the aid of commerce, and wholly within the power of the said State to make such regulations.

It denies that such delivery or switching regulations as im-
459 posed upon common carriers by the Constitution and laws of the State of Kentucky is to any extent unreasonable, or any regulation of commerce itself, otherwise than for the benefit of the public and in aid of such commerce.

W. M. SMITH,
DODD AND DODD,
Attorneys for Plaintiff.

R. C. Watkins being duly sworn says he is Vice President and Traffic Manager of the plaintiff, Central Stock Yards Company, and is its chief officer now in the State of Kentucky, and that the statements contained in the foregoing reply are true as he verily believes.

R. C. WATKINS.

Subscribed and sworn to before me by R. C. Watkins this the 22nd day of May, 1902.

My commission expires the 30th day of January, 1906.

M. W. RIPY,
N. P., J. C., Ky.

460 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Demurrer.

The plaintiff demurs to the second, third and fourth paragraphs of defendant's second amended answer herein, and to each of said paragraphs separately, and for cause therefor says: that neither of said paragraphs state facts sufficient to constitute or support a defense to or an avoidance of the cause of action in plaintiff's petition and amended petitions as asserted.

Wherefore, etc.

W. M. SMITH,
DODD & DODD,
Attorneys for Plaintiff.

461 At a court held on the 21st day of June, 1902:

The Court being advised, it is ordered that plaintiff's demurrer to the third paragraph of the defendant's second amended answer, be and is sustained, to which the defendant excepts.

And it appearing to the Court that a reply has been filed to the second and fourth paragraphs of said pleading, it is further ordered that the demurrers thereto be and are treated as waived, and overruled; to which the plaintiff excepts.

At a Court held on the 26th day of June, 1902:

Came plaintiff, by counsel, and upon written notice and motion filed, it is ordered that the order entered herein on the 21st inst. overruling plaintiff's demurrer to the second and fourth paragraphs of the second amended answer of the defendant herein be and is set aside.

Said notice and motion filed herein of the 26th day of June, 1902, are as follows, to-wit:

462 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Notice.

To the defendant, Louisville & Nashville Railroad Company, or Helm, Bruce and Helm, its attorneys of record, you are hereby notified that on Thursday, June 26th, 1902, at or about the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, the plaintiff in the above styled action will move the Court to set aside the

order entered herein on June 21st, 1902, overruling the demurrer to the second and fourth paragraphs of the second amended answer of the defendant herein, and to this notice a true copy of the said motion to be made is attached.

W. M. SMITH,
DODD & DODD,
Attorneys for Plaintiff.

463 The return on the foregoing notice is as follows, to-wit:

Executed June 25th, 1902, at 3:10 P. M., on Louisville and Nashville Railroad Company by delivering a copy of the within notice and motion therein mentioned to James P. Helm, of the firm of Helm, Bruce and Helm, attorneys of record for defendant, Louisville and Nashville Railroad Company.

CHARLES JOHANBOCKE.

Charles Johanboecke, being duly sworn says that he is a white male person over 16 years of age; that he is not a party to nor interested in the above action, and that his endorsement to the above action is true.

CHARLES JOHANBOCKE.

Subscribed and sworn to before me by Charles Johanbocke this the 25th day of June, 1902.

My commission expires February 18th, 1906.

J. B. McCORMACK,
N. P., J. C., Ky.

464 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Motion to Set Aside Order Overruling Demurrer.

The plaintiff, Central Stock Yards Company, moves the court to set aside the order entered herein on June 21st, 1902, overruling the demurrer to the second and fourth paragraphs of the second amended answer of the defendant herein, because the Court was in error in assuming in its memoranda written directing the overruling of the said demurrers that the said second or fourth paragraphs of the second amended answer had been replied to in whole or in part; and because further the Court was manifestly led into said error by the manner in which the pleadings heretofore filed were bound
465 together, and in considering the reply to the second and fourth paragraphs of the original answer as being a reply to the second and fourth paragraphs of the second amended answer.

W. M. SMITH,
DODD & DODD,
Attorneys for Plaintiff.

466 At a Court held on the 28th day of June, 1902:
This action was set at rules by the plaintiff on the 23rd inst.
And on motion of plaintiff, by counsel, ordered that this action be and it is remanded to the rules.

At a Court held on the 4th day of October, 1902:
The Court being advised it is ordered that plaintiff's demurrer to second and fourth paragraphs of defendant's second amendment to answer be and the same is hereby overruled; to which the plaintiff excepts.

At a Court held on December 20th, 1902:
This action was set at rules by the defendant on the 15th inst.
And on motion of plaintiff, by counsel, it is ordered that
467 this action be and it is postponed to January 3rd, 1903.

At a Court held on January 3rd, 1903:
Came plaintiff by counsel and filed written notice
And also filed an amended petition,
And also filed reply to second amended answer herein.
And it is ordered that this action be and it is remanded to the rules.

Said reply and amended petition filed herein on the 3rd day of January, 1903, are as follows, to-wit:

Messrs. Helm, Bruce and Helm, Attys. for the L. & N. R. R. Co.

DEAR SIRS: You are hereby notified that in the case of the
468 Central Stock Yards Company *vs.* the Louisville and Nashville Railroad Company, #30269, Chancery Branch, First Division, we will, on January 3rd, 1903, tender for filing in the Joint Session of the Jefferson Circuit Court, a reply to the second and fourth paragraphs of the second amended answer filed by you on May 15th, 1902, and also an amended petition in said case.
We hand you herewith a copy of said amended petition and reply

DODD & DODD,
W. M. SMITH,
Att'ys for Central Stock Yards Co.

Notice accepted
HELM, BRUCE AND HELM,
Att'ys for Defendant.

Jefferson Circuit Court, Chancery Branch, First Division.

469 CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Amended Petition.

Plaintiff the Central Stock Yards Company, further amends its original petition filed herein and says that at all times mentioned in its pleadings herein and now, defendant the Louisville and Nashville Railroad Company, as to interstate shipments tendered to it for consignment and delivery to the Southern Railway Company in Kentucky for delivery at said Central Stock Yards or station or any person doing business thereat, has failed and refused to receive bill, transfer, transport, switch and deliver same or any of the said consignments so tendered, but on the contrary against the known wishes and request of the consignors and owners, has billed all live stock so tendered or consigned to Louisville, Ky., and delivered same at the
Bourbon Stock Yards in Louisville, Ky., and has failed and
470 refused to permit the consignors or consignees, or both conjointly, to change the designation of such shipments when they reached the break-up yards of defendant in South Louisville, Ky., or have the same switched or transferred to said Southern Railway for delivery at Central Stock Yards or station or any person doing business at said yards, athough so requested to do by both consignor and consignee, when to have so changed the designation would not have imposed any additional burden upon or cost to defendant, and the said defendant has announced its intention and purpose to continue to refuse to permit under any circumstances or conditions, any change of designation of such shipments, all of which is to the great and irreparable injury and damage of the plaintiff.

Wherefore in addition to the relief sought in the original petition and amended petitions filed herein, plaintiff now prays that on final hearing herein, the defendant, the Louisville & Nashville Railroad
Company, be required, whenever so requested by the con-
471 signor and consignee or owner of said stock, at any of its stations, and particularly at the break-up yards in South Louisville, Ky., to recognize the right of the parties to change the designation of said shipments, and that defendant be required to change said designation and make delivery thereof at one of the points of physical connection between the tracts of said defendant's lines and the tracts of the Southern Railway Company in Kentucky for delivery by the said Southern Railway Company at the Central Stock Yards Station Kentucky or to whomsoever there consigned, and pravs for all further and proper and equitable relief as the nature of the case may demand.

DODD & DODD,
W. M. SMITH,
Attorneys for Plaintiff.

J. H. Ashcraft, Jr., being duly sworn says he is Secretary and Treasurer of the plaintiff, Central Stock Yards Company, and that its president and vice president are both absent from Jefferson County, Kentucky, and that he is its chief officer now in this County, and that the statements contained in the forgoing pleading
472 are true as he verily believes.

J. H. ASHCRAFT, Jr.

Subscribed and sworn to before me by J. H. Ashcraft, Jr., this the 2nd day of January, 1903.

My commission expires at the end of the next session of the Senate.

ELEANOR SHORT,
N. P., J. C., Ky.

473 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Reply to Second Amended Answer.

Plaintiff, the Central Stock Yards Company, for reply to the second paragraph of defendant's second Amended Answer, filed herein on May 15th, 1902, denies that the Central Stock Yards are located in a place inconvenient of access, or removed any considerable distance from that portion of the City of Louisville in which the live stock and meat packing interests and establishments are mainly located.

Plaintiff denies that it was the purpose of its second Amended Petition to compel defendant, for a norminal charge, to turn over the use of its terminal facilities, or its tracks and depot in the
474 City of Louisville, to the use of a competitor; or to compel defendant to do a mere transfer business in transferring live stock from the live stock depot of the Southern Railway to the depot of the defendant.

Plaintiff denies that it is now, or ever has been its purpose to compel defendant, for a *normal* charge, or any charge less than the usual and reasonable charge, to make delivery of live stock coming from plaintiff's stock yards, or that it now is or ever has been its purpose to compel defendant to turn over the use of its terminal facilities or its trains or depot in the City of Louisville to the use of plaintiff or any competitor of defendant, or to require defendant to do anything further than to perform its duty to plaintiff, and to the public generally in receiving, transferring, switching, shipping, and delivering freight in the usual and customary way, and for the usual reasonable charge, which, as a common carrier, it is required by law to do.

It denies that to require it to perform such duty would re-
475 quire it to do a character of business different from that required by law of railroad companies, or that it would thereby deprive defendant of its property without due process of law, or violate any provision of the constitution or laws of the United States for such cases made and provided, or that it would in any wise infringe upon the rights or privileges of defendant granted or protected by the 14th amendment of said constitution, or that it would impair the value of the terminals of defendant for the purposes for which they were acquired or impede delay or incommode the conduct of defendant's legitimate business or that it would deprive the defendant of any of its business.

Plaintiff denies that the exchange of cars, or the shipping of freight therein without breaking bulk, coming into Louisville over other lines than those of defendant, has been done purely as a voluntary matter for the accommodation of defendant's patrons; but plaintiff says that in case of live stock shipments defendant made such exchange and transfer in accordance with the general
476 custom of all railroads, and as it was and is by law required to do.

Plaintiff denies that the charges fixed for the service aforesaid were or are less than the cost of performing same.

Paragraph 2.

Plaintiff for reply to the fourth paragraph of defendant's second amended answer, denies that it seeks by this action to require defendant, the Louisville & Nashville Railroad Company to give up its cars in which it has brought live stock to the City of Louisville, consigned or destined to plaintiff's yards, or to give such cars containing such live stock into the possession and control of the Southern Railway Company to be used by the latter; but says that it asks that defendant, being a common carrier of live stock, be required to deliver all such live stock coming over its lines consigned or destined to plaintiff's yards in bulk or carloads, to the Southern Railway Company at points of physical connection between the two roads
477 for delivery by the Southern Railway Company at plaintiff's yards as a switching movement, and to receive all shipments from plaintiff's yards destined to the Bourbon Stock Yards, and as billed and consigned, at points of physical connection between said roads.

Plaintiff denies that such exchange of cars is regulated by the judgment or discretion of the railroad company owning the cars; but says that such exchange of cars is required by law, and particularly by the Constitution and Statutes of Kentucky, of all railroads having phyisical connection the one with the other, and engaged as common carriers in the hauling of live stock shipment.

Plaintiff denies that defendant has never allowed its live stock cars to go off of its line or road, or out of its possession as a matter of course, or on the demand of shippers or consignors, or consignees of live stock; or that it has exercised or can exercise the right of

saying and determining when its live stock cars should go off of its line, or out of its possession to the lines or into the possession
478 of other roads having physical connection with it for the purpose of delivery and in conformity to the switching regulations of the constitution and laws of Kentucky, or that it can or does exercise the right of determining when it will receive on its lines cars, loaded with live stock, belonging to other roads having physical connection with its lines, and as required by the laws of Kentucky.

Plaintiff denies that to require such exchange would be to take defendant's property without due process of law, or would be in violation of the Constitution or laws of the United States.

And now having replied, defendant prays as in its original and amended petitions.

DODD & DODD,
W. M. SMITH,
Attorneys for Plaintiff.

J. H. Ashcraft Jr., being duly sworn says he is Secretary and Treasurer of the Plaintiff, Central Stock Yards Company,
479 and that its President and Vice President are both absent from Jefferson county, Kentucky, and that he is its chief officer now in this County and that the Statements contained in the foregoing pleadings are true as he verily believes.

J. H. ASHCRAFT, JR.

Subscribed and sworn to, before me, by J. H. Ashcraft Jr. this the 2nd day of January, 1903.

My commission expires at the end of the next session of the Senate.

ELEANOR SHORT,
Notary Public, Jefferson Co., Ky.

480 At a Court held on the 20th day of January, 1903:

Came defendant, by counsel, and filed written notice and also filed answer to plaintiff's third amended petition and filed also a rejoinder herein.

And by agreement of parties, by counsel, upon written order filed, it is ordered that the testimony to be taken in this action shall be taken by Alonzo Walker the official stenographic reporter of this Court, upon notice to counsel of record, and this case is now referred to him for that purpose.

Said notice, answer, rejoinder and order of reference filed herein on the 20th day of January, 1903, are as follows, to-wit:

481 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Plaintiff will take notice that on Tuesday, January 20th, 1903, defendant in the above styled action will file an answer to plaintiff's last amended petition, and also a rejoinder.

HELM, BRUCE AND HELM,
Attorneys for Defendant.

Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Answer to Plaintiff's Third Amended Petition.

482 Defendant, Louisville and Nashville Railroad Company, for answer to plaintiff's third amended petition filed January 3rd, 1903, denies that to have changed the destination of stock in the sense and in the manner referred to in said amended petition would not have imposed any additional burden upon or cost to defendant.

It denies that it has announced its intention or purpose to continue to refuse to permit under any circumstances or conditions any change of destination of shipments.

HELM, BRUCE AND HELM,
Attorneys for Defendant.

M. H. Smith says he is President of the defendant and believes the statements of the foregoing pleading are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith, this 16th day of January, 1903.

My commission expires January 29th, 1906.

[SEAL.]

G. W. B. OLMSTEAD,
Notary Public.

483 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO., Defendant.

Rejoinder.

Defendant, the Louisville and Nashville Railroad Company, for rejoinder to the reply of the plaintiff herein denies that in case of the live stock shipments therein referred to and as to which it is alleged that exchanges and transfers were made between this defendant and other railroad companies, such exchanges and transfers or any of them were made in accordance with the general custom of all railroads, or as required by law, or otherwise than as explained in defendant's answer herein.

HELM, BRUCE AND HELM,
Att'y for Def't.

484 M. H. Smith says he is the President of the defendant the Louisville and Nashville Railroad Company and its chief officer now in this State, and that he believes the statements of the foregoing pleading are true.

M. H. SMITH.

Subscribed and sworn to before me by M. H. Smith this 16th day of January, 1903.
My commission expires January 29th, 1906.
[SEAL.] G. W. B. OLMSTEAD,
Notary Public.

Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD CO., Defendant.

Order of Reference.

By agreement of parties ordered that the testimony to be taken in this action shall be taken by Alonzo Walker, the Official
485 Stenographic reporter of this Court, upon notice to counsel of record, and this case is now referred to him for that purpose.

Said reporter shall take said testimony in shorthand, and cause a full and accurate transcript of same to be made and filed among the papers of this case, and when so filed, said testimony shall constitute a part of the record of this case, and shall be read in evidence herein; and when attested by the Judge before whom the trial is had, said

testimony may be taken, without being copied, to the Court of Appeals, to be used upon any appeal from any judgment that may be rendered in this case, and said transcript shall thereafter be returned to this Court.

486 At a Court held on the 14th day of March, 1903:

This action was set at rules by the defendant on the 9th inst.

And on its motion it is ordered that this action be and it is postponed to the 26th inst. with general leave.

At a Court held on the 17th day of March, 1903:

By consent of parties, by counsel, it is ordered that the order setting this action for hearing for the 26th instant is hereby set aside.

And it is further ordered that this action be and is now assigned to the 24th inst. for hearing.

At a Court held on the 24th day of March, 1903:

By agreement of parties by counsel, it is ordered that this action be and it is re-assigned to April 2nd, 1903:

487 At a Court held on the 2nd day of April, 1903:

Came parties by counsel, and the defendant filed exceptions to the depositions herein.

And came again the defendant and tendered and moved the Court to file an amended answer and two exhibits (Bill of complaint, and Opinion of Circuit Court of Appeals) herein; to which the plaintiff objects, but said objection is not for the lack of verification of said amended answer. And said motion being submitted and the Court being advised, it is ordered that said motion be and it is hereby overruled; to which the defendant excepts.

And it is further ordered that said amended answer and exhibits be and are hereby made part of the record for the purpose of appeal.

And this action having been heard, it is ordered that said action be and it is hereby submitted in chief.

488 Said exceptions, amended answer and exhibits filed herein on the 2nd day of April, 1903, are as follows, to-wit:

Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Exceptions to Depositions.

1. Defendant, the Louisville and Nashville Railroad Company excepts to the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth questions and answers, and to each of them, on the redirect examination of the

witness B. S. Josselyn because the testimony relates to the contents and effect of written instruments and records and is incompetent.

2. The defendant excepts to the third, fourth, fifth, seventh, eighth, ninth and tenth questions and answers, and to each
489 of them in the deposition of the witness, B. H. Young, because said testimony relates to the contents and effect of written instruments and records and is incompetent.

3. Defendant excepts to the fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third questions and answers and to each of them, upon the direct examination of the witness, E. A. Billington because it appears from the deposition of said witness that he did keep or assist in keeping the records of which he speaks and of which he purports to file copies, and that he knows nothing about their correctness and the said testimony is incompetent.

HELM, BRUCE AND HELM,
Attorneys for Def't.

490 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Amended Answer.

The defendant for further amendment to that part of its answer herein which pleaded the pendency of a suit in the United States Circuit Court for the Western District of Kentucky between the plaintiff herein, the Central Stock Yards Company as complainant therein, and the defendant herein, the Louisville and Nashville Railroad Company as defendant therein, says that in said suit in the Federal Court the complainant therein, so far as concerns stock or shipments of stock transported, or desired to be transported from points outside of Kentucky to points within Kentucky, sought exactly the same relief as it seeks in this action, and pleaded and relied upon every ground for relief in that suit that it pleads or re-
491 lies upon in this action. A copy of the bill of complaint and amendment thereto in said Federal Court suit is filed herewith as an exhibit marked "Bill of Complaint in the Federal Court."

And defendant says that since the filing of its last amended answer herein the appeal of complainant from the judgment of said United States Circuit Court dismissing said bill of complaint has been determined by the United States Circuit Court of Appeals, and said judgment has been by said Court of Appeals affirmed for reasons given in a written opinion filed by said Court of Appeals (118 Federal Reporter 113) and a copy of which is filed herewith as part hereof marked "opinion of Circuit Court of Appeals" in which judg-

ment of affirmance it was determined upon the merits of said cause that said complainant was not entitled to any part of the relief prayed for by it. Said judgment of the said United States Circuit Court of Appeals is still in force and effect, though an appeal has been taken from it to the Supreme Court of the United States where said appeal is now pending undetermined.

Wherefore the defendant pleads the aforesaid judgment as
492 a bar to so much of the claim for relief in the present action as relates to stock shipped or transported, or desired to be shipped or transported from points outside of Kentucky to points within Kentucky, and prays that plaintiff's petition be dismissed.

HELM, BRUCE, AND HELM,
Attorneys for Defendant.

—— —— says that he is —— of the Louisville and Nashville Railroad Company, and its chief officer now in this county, and he believes the statements of the foregoing pleading are true.

—— ——.

Subscribed and sworn to before me by —— —— on this 2nd day of April, 1903.

My commission expires.

—— ——.

493 In the Circuit Court of the United States for the Western District of Kentucky. In Equity.

THE CENTRAL STOCK YARD CO., Plaintiff,
vs.
LOUISVILLE & NASHVILLE R. R. Co., Defendant.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Kentucky:

1. Your orator, the Central Stock Yards Company, respectfully represent to this Honorable Court that it is a duly and legally authorized and organized corporation under the laws of the State of a Delaware, and as such, authorized to contract and be contracted with,
494 sue and be sued in said corporate name; that it is a citizen and resident of the State of Delaware; that it has in every and all respects complied with the requirements of the Constitution and laws of the State of Kentucky necessary for it to conduct its business in said State, and it brings this, its bill of complaint, against the defendant, the Louisville and Nashville Railroad Company, which it alleges is and was at the times hereinafter mentioned, and has been for many years a railroad Company organized and existing under and by virtue of the laws of the State of Kentucky with power to contract and be contracted with, sue and be sued in said corporate name; that said defendant, the Louisville and Nashville

Railroad Company, is a citizen and resident of the State of Kentucky.

2. That this suit is between citizens of different States, viz, the Central Stock Yards Co., a citizen of the State of Delaware, and the Louisville and Nashville Railroad Company, a citizen of the State of Kentucky, and that the amount in controversy as will be hereinafter fully shown and set forth exceeds the sum or value of two thousand dollars exclusive of interest and costs, and that the acts
495 hereinafter complained of and fully set forth are in violation of the Constitution and laws of the United States and statutes thereunder, and more particularly in violation of the third section of an act of the Congress of the United States, known as "An Act to regulate commerce," passed February 4th, 1887, and amendments thereto.

3. Plaintiff says that it has constructed a live stock plant fully equipped with the latest improved and best facilities for, and is now engaged in, receiving, unloading, feeding, watering, carrying for, weighing, having sales made of, and reloading live stock that may be consigned to it for care, attention and sale; that its stock yards are on the line of the Southern Railway Company in Kentucky, in Jefferson County Kentucky, about nine miles from the terminus of said railway in the City of Louisville; that the said railway company in Kentucky is a duly created, organized and operating railway system in Kentucky under the laws of said State, and that plain-
496 tiff's said stock yard has by the Southern Railway Company been duly and regularly established, and now is a station on the line of the said Southern Railway Company in Kentucky known as "Central Stock Yards, Kentucky," and that said Southern Railway Company has heretofore duly and regularly given notice of the establishment of said station to its agents and all connecting railways and common carriers in Kentucky. Plaintiff says that it (Central Stock Yard Company) is engaged in the Stock Yard business and has ample capital, premises and facilities in every way to carry on properly and economically a Stock yard for the reception of shipments of stock, for the sale of same, and for feeding, watering, carrying for, and giving all proper attention thereto while in its custody. Plaintiff further says that it, with the Southern Railway Company in Kentucky, has in operation all necessary switches, tracks, platform and shutes connecting its said yard with said Railway system, and has modern and of the best facilities for receiving and unloading live stock of every description, and in any qual-ity that may be consigned to it. That said Southern Railway Company has
497 heretofore notified all railways and common carriers including the defendant, the Louisville and Nashville Railroad Company, entering the said City of Louisville that it, the Southern Railway Company, would be after November 1st, 1901, has ever since been and is now ready, willing, and able to accept at points of physical connection with said Louisville and Nashville Railroad Company and all other railway Companies and common carriers, live stock entering the City of Louisville consigned to any and all persons at this station, Central Stock Yards, Ky., on its line aforesaid

in Kentucky, Jefferson County, and that it would be and is now willing to be responsible from such points of connection, for the delivery of such live stock, and the collection of all charges on same, and would promptly return to such points of connection all empty cars and account for all freight charges collected in the usual way.

4. Plaintiff says that defendant, the Louisville and Nashville Railroad, is and was at the times hereinafter mentioned, and has been for many years, a railroad corporation created, organized and ex-
498 isting under and by virtue of the laws of the State of Kentucky, with power in its corporate name to contract and be contracted with, sue and be sued, and to conduct and operate a Steam Railroad in and through Kentucky and elsewhere, with its chief office and terminus in Louisville, Kentucky; that it is so operating and maintaining such road in Kentucky and elsewhere, in Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida, Indiana, and Illinois, and is a common carrier engaged in the transportation of passengers and property wholly by railroad along some of its lines, and partly by railroad and partly by water on other of its lines under a common control, management and arrangement for a continuous *and* shipment from one State of the United States to another State of the United States.

Plaintiff further says that the Southern Railway Company in Kentucky has at Louisville, Ky., at least three points of physical connection between its tracks and the tracks of the defendant Louisville & Nashville Railroad Company, which are known respectfully as the Bergen and Meehan switch or connection, the Fourth Avenue connection, and the Seventh and Magnolia Streets connection.
499 The Bergen and Meehan Co. switch is at the intersection of the said Southern Railway Company tracks and the tracks of the said Louisville and Nashville Railroad Co., at or near Floyd Street, or between Floyd and Brook Street, and is about fourteen hundred and seventy five feet in length (1475). It says that about nine hundred and seventy five (975) feet of said Bergen and Meehan switch or siding and physical connection between tracks of said Southern Railway Company in Kentucky and the tracks of the defendant, Louisville and Nashville Railroad Company are owned by the Southern Railway Company in Kentucky, and about five hundred (500) feet of said switch or siding and physical connection is known as the Bergen and Meehan private switch, but that the defendant, Louisville & Nashville Railroad Company has the right to use and does use said Bergen and Meehan five hundred (500) feet of said siding or switch, and same forms a connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the defendant, Louisville and Nashville Railroad Company, and is only about twenty two hundred (2200) feet in trackage
500 from the plaintiff's plant and the station in Jefferson county, Kentucky on the line of the Southern Railway Company in Kentucky known as Central Stock Yards, Ky.; that the Fourth Avenue connection is only about One Hundred and twenty eight (128) feet in length, and is about equally owned by the defendant, Louisville and Nashville Railroad Company, and the Southern Railway

Company in Kentucky, and is about half a mile from plaintiff's plant, and the station in Jefferson county, Kentucky, on the line of the Southern Railway Company in Kentucky, known as Central Stock Yards, Kentucky; that the Seventh and Magnolia Street connection consists of a tract in length about twenty four hundred and fifty four (2454) feet with siding in connection therewith in length about eleven hundred and seventy two (1172) feet; that upon said main track connection and siding there can be handled about seventy four (74) cars at one time of interchanged traffic of the one railway Company or system with the other, and that said points of physical connection is only about one mile and a half from plaintiff's plant and the station in Jefferson county, Kentucky, on the line of
501 the Southern Railway Company in Kentucky, known as Central Stock Yards Kentucky; and that at said three points of physical connection between the tracks of the said Southern Railway and the tracks of the Louisville and Nashville Railroad Company, the said two railway systems have heretofore received and delivered, and are now receiving and delivering each one to the other, and from the other, freight other than live stock, consigned to Central Stock Yards, Ky., in car-load lots and less for delivery to consignee on the track or tracks of one or the other.

6. Plaintiff says that the defendant, the Louisville and Nashville Railroad Company, is a common carrier as aforesaid of passengers and freight of all kind- and descriptions, and by the Constitution and laws of the United States, and particularly by the "Act" of the Congress of the United States approved February 4th, 1887, and known as the "Act" to regulate "Commerce" and especially the third section thereof, it is made unlawful for any interstate com-
502 mon carrier to make or give any undue or unreasonable preference or advantage to any particular person Company, firm, corporation or locality or any particular description of the traffic in any respect whatever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever, and such carrier to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

7. Plaintiff says that Louisville and Nashville Railroad Company has announced its intention and purpose to refuse to receive, *build*, transport, switch or deliver any live stock the shipment of which originates outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between the said line and the line of the Southern Railway in Ky., destined to the Central Stock Yards Station, Kentucky, or to the Central
503 Stock Yards Ky. or to any such live stock consigned to any individual, partnership, firm or corporation at said Central Stock Yard- Kentucky, or at said Central Stock Yards Station, Ky. or via the Southern Railway Company in Kentucky, destined to said

rd or station and that it has so instructed its agents and employés
l along its lines; that in accordance with said announced inten-
on and purpose and instructions given, it has for the last two
onths failed and refused and now fails and refuses to receive, build,
ansport, transfer, switch or deliver any such stock as consigned or
ndered to be so consigned for shipment, although during said time,
om day to day live stock shipments originating out of the State of
entucky have been tendered defendant from connecting lines and
her common carriers, shippers and consigned to said Central Stock
ards, Ky., and to said Central Stock Yards, Station Ky., and to in-
viduals, firms, corporations and partnerships at said Central Stock
ards, Ky., and at said Central Stock Yards station, Ky. and to said
ock Yards and Station via. the Southern Railway Company in
Kentucky.

94 8. Plaintiff further says that as to such interstate shipments so tendered or consigned, defendant has continuously failed
d refused to receive, *build*, transport, transfer, switch or deliver
me to said Southern Railway Company in Kentucky for delivery
said Central Stock Yards or Station, but on the contrary, against
e known wishes and requests of the consignors, has billed all live
ock shipments so tendered or consigned, to Louisville, Ky., and
elivered same at the Bourbon Stock Yards in Louisville, Ky., and
s failed and refused to permit the consignor and consignee con-
intly to change the destination of such shipments, when they
ached the break-up yards of defendant in South Louisville Ky.,
d have same switched and transferred to the Southern Railway
ompany in Kentucky for delivery at Central Stock Yards — Central
ock Yards Station, Ky., although so requested where the defendant
new the consignees were, and both consignor and consignee desired
e delivery made, although to have thus changed the destination
would have been less inconvenient or burdensome to defend-
95 ant, than to have taken said shipments from its break-up yards to the Bourbon Stock Yards, which would make a dif-
rence in the haul of some five or six miles, and for which defend-
t would not receive any additional pay or compensation.

Plaintiff further states that on December 21st, 1901, at Columbia,
enn., a regularly established station on the Louisville and Nash-
lle Railroad Co., Allen Bros., customers of McCampbell & Co. Com-
ission merchants and brokers doing business at the Central Stock
ards with offices located at said stock yards, tendered to the agents
d employés of the Louisville and Nashville Railroad Co., at said
ation at Columbia, Tenn., a carload of cattle which were loaded in
& N. car 18726, and billed to Allen Bros., Louisville, Ky., care of
art, McCampbell & Co., Louisville, Ky.; that before receiving and
lling said car load of stock, said Allen Bros., demanded of the said
ouisville and Nashville Railroad Company that said Company re-
ceive, bill, transport, transfer, switch and deliver the said car
96 load of cattle to the Southern Railway Company at Louisville,
Ky., at one of the points of physical connection between the
acks and the Southern Railway Company and the tracks of the de-
ndant, the Louisville and Nashville Railroad Company, for de-

livery by the Southern Railway Company at Central Stock Yards, Central Stock Yards Station, Ky., care of Hart, McCampbell & Co., but the defendant, the Louisville and Nashville Railroad Company, neglected, failed and refused to so bill the said stock and would not bill same otherwise than as stated, that is, to said Allen Bros., care of Hart, McCampbell and Co. Louisville, Ky.

Plaintiff further says that said Allen Bros., immediately upon receiving the bill of lading for said car, forwarded same to said Hart, McCampbell & Co., and wired them requesting them to demand that said car load of cattle should be stopped and unloaded at the Central Stock Yards, Central Stock Yards Station, Ky.

Plaintiff further says that upon receipt of said telegram, and acting upon the instructions of the consignor said Hart, McCampbell
507 & Co., consignees, did, on the 22nd day of December, 1901 before said car reached South Louisville, the break-up yards of the Louisville and Nashville Railroad Company, give written notice and requested of the agent, one J. F. Coady, the agent at said place, of the Louisville and Nashville Railroad Company, to change the destination of said car from Allen Bros., Louisville, Ky., care of Hart, McCampbell and Co., to Central Stock Yards, Central Stock Yards Station, Ky. viz, the Southern Railway Company, Louisville, Ky., but that said agent refused to change the destination of said car as requested, and announced his purpose to and thereafter did make delivery of the said car load of cattle at the Bourbon Stock Yards and inform plaintiff that the Louisville & Nashville Railroad Company had directed him that any and all live stock that should arrive at South Louisville over the lines of the Louisville and Nashville Railroad Company, and billed to any person at Louisville, Ky., would only be delivered at the Bourbon Stock Yards, and that the said defendant would refuse to recognize the right or rights
508 of any shipper owner or consignee of live stock to direct any change in its destination, that is as to all stock, the shipment of which originated outside of the State of Kentucky.

9. Plaintiff further says that on the 20th day of September, 1888, a contract was entered into between the Louisville and Nashville Railroad Company first party, and the Bourbon Stock Yard Co., second party, and that by the 4th section of said contract said parties agreed and contracted with each other as follows:

"4. First party agrees that it will not lease, rent or sell any of its grounds in the City of Louisville for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said City, and it will establish no other stock depot in said City, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the road of the first party and consigned to the City of Louisville, and should any live — be shipped to other person or persons in said City, the first party hereby makes and agrees to make the stock yards of
509 the second party the stock depot of the first party for said City, and agree- to unload all live stock shipped to said City, at the address of the second party, but if the provisions of this section of this contract be abrogated or invalidated by judgment of any

or by legislative requirement, then the second party shall have
aim to damages arising out of or dependent on said expense,
d any and all litigation which may arise out of the provisions
is section, and will hold the first party entirely harmless there-
"

intiff says that in order to carry out said contract on its part,
ouisville & Nashville Railroad Company has ever since the
al Stock Yards Company operated, continuously and persist-
refused to receive, bill, transport, transfer, switch or deliver
intra or interstate stock coming over the lines consigned to
entral Stock Yards, Ky. or Central Stock Yards Station, Ky. or
y individual, firm or corporation at said Yards or Station, to
the Southern Railway Company in Kentucky, for delivery at
said yards or Station and that it only began to deliver such
intra State stock after an injunction had been obtained in the
Court requiring it to do so, but that as to the interstate stock,
l refuses to receive, bill, transport, transfer, switch or deliver
as stated; that such action on the part of the defendant, the
ville & Nashville Railroad Company, is unlawful and makes
ives an undue and unreasonable preference and advantage to
ourbon Stock Yards Company over the Central Stock Yards
any, and is an undue and unreasonable prejudice and disad-
ge to the Central Stock Yards, and that said action on the part
defendant, the Louisville & Nashville Railroad Company is
nd done for said purpose, and in order to break down the said
l Stock Yards Company, and to build up and sustain the said
on Stock Yards Company and for this reason alone.
intiff further says that the unlawful and unauthorized refusal
endant to receive bill, transport, transfer, switch and deliver
said live stock so tendered or consigned, has greatly damaged
the plaintiff, and is a violation of the Constitution and laws
of the United States, and especially the Act to regulate com-
, passed by the Congress of the United States, and approved
ary 4th, 1887, and amendments thereto, and that all of said
on the part of said defendant, the Louisville & Nashville Rail-
Company, is an unjust, unauthorized and unlawful discrimi-
against the plaintiff and unless restrained and prevented, and
defendant is required to receive, bill, transfer, transport
and make delivery of said live stock as ordered by the Con-
, or as, after shipment, ordered by the consignor or consignees
ners, great and irreparable injury and damage will result to
iff and its stock yard.

Plaintiff says that it has invested in its plant about $200,000,
s connected therewith a number of leading commission houses,
f whom have their offices at said plant, and are engaged in
selling and purchasing, from day to day, live stock at said
yards, and that a large number of customers throughout the
State of Tennessee and elsewhere have expressed the purpose
ng business at said yards with said commission merchants and
ndeavored to have their stock consigned to said merchants and
aintiff, and consigned to themselves at said yards for sale by

such commission houses and for care and attention and feeding by Plaintiff, but that they have been prevented from doing so by the wrongful and unlawful failure and refusal of defendant Louisville & Nashville Railroad Co., to receive, bill, transport, switch and deliver same when said stock is so tendered, and they are requested to do so, and that said defendant still refuses and fails to handle said stock otherwise than as hereinbefore stated.

Plaintiff further says that the railway system of the defendant the Louisville & Nashville Railroad Company, extends through and over a large portion of the cattle and live stock raising sections of Tennessee and of several other Southern States, and that in order to reach the Central Stock Yards, one of the natural markets for said stock, it must necessarily pass over the lines of defend-
513 ant's road, and that by reason of the wrongful and unlawful action of the said Louisville & Nashville Railroad Company and by reason of the discrimination against plaintiff as aforesaid all of said shippers customers and patrons of plaintiff and of the numerous commission merchants doing business at said Central Stock Yards are required and compelled by the Louisville and Nashville Railroad Company to consign their said stock as directed by the said Louisville and Nashville Railroad Company, and to have same delivered at a stock yard other than that of plaintiff and other than the one at which such consignors and shippers desired said stock to be delivered; that is at the Bourbon stock yard, Company, Ky., and that such arbitrary, unlawful and oppressive conduct and discrimination on the part of defendant against plaintiff and the shippers and dealers in live stock along its lines, and the announced purpose and expressed intentions of defendant by written as well as by verbal instructions to its agents, and by its conduct as aforesaid, and by its declared intention to plaintiff, to continue to so fail, neglect and refuse to receive, bill, transport, transfer, switch or deliver such interstate live stock destined to the Central Stock Yards, or to
514 deliver same to the Southern Railway at any of the points of physical connection, to be delivered by it at the Central Stock Yards, or at Central Stock Yards Station, unless immediately restrained and prevented, will cause great and irreparable injury and damage to plaintiff and its business, resulting in its disruption and destruction.

Plaintiff says that next Monday, the 13th of January, is its regular sale day, and in fact, the principal sale day of the week, and that most of the dealers in live stock throughout the country at large, make shipment of such stock along the lines of road over which it comes so that it may arrive at the stock yards on Saturday preceding the principal sale day on Monday, and that plaintiff has received notice and knows of a number of interstate shipments that will arrive over the lines of the Louisville and Nashville Railroad between now and Monday morning, and which are desired by the shippers to be delivered to the Central Stock Yards Station, and that unless an immediate restraining order and mandatory order of injunction be granted herein without notice, requiring and compelling said
515 defendant to so receive, bill, transport, transfer, switch and deliver such interstate stock destined to the Central Stock Yards

or said Station, great and irreparable injury will be done plaintiff in its business.

11. Plaintiff says it has no adequate or ample remedy at law for the injury of its business inflicted as aforesaid, and threatened and complained of as hereinbefore alleged, and that if required to institute an action for damages upon each and every refusal of the defendant, to receive, bill, transport, transfer, switch or deliver such interstate live stock, great delay will be occasioned to the shippers and dealers in live stock and the plaintiff in receiving the same for sale, and by the failure of the plaintiff to receive the said live stock for care and attention and feeding thereof, great damage will be done to plaintiff, and suffering inflicted upon said stock, and the business of plaintiff will be disrupted and totally ruined, and separate and distinct actions will be wholly inadequate to the injury so inflicted.

516 Plaintiff further says that the said failure and refusal of defendant as aforesaid to receive, bill, transport, transfer, switch or deliver the said stock has resulted in great and irreparable injury to plaintiff's business, and that it has been damaged thereby in the sum of at least three thousand ($3000.00) Dollars and if defendant carries out its announced purpose and expressed intention to continue in such refusal, the plaintiff will be damaged in the sum of at least Fifty Thousand ($50,000.00) Dollars.

12. Plaintiff further states that the injunction herein sought and prayed for has never been refused by this Court, or any judge of this Court, or any Circuit Judge or District Judge or Justice of this Court.

Wherefore, the plaintiff prays that the defendant, the Louisville and Nashville Railroad Company of Ky., be by mandatory order of injunction immediately ordered and required to receive, bill, transport, transfer, switch and deliver all shipment- of live stock tendered to it outside of the State of Kentucky, consigned or tendered

517 to be consigned to any point of physical connection between its said line and the line of the Southern Railway Company in Kentucky, destined to the Central Stock Yards Station, Ky., or to the Central Stock Yards, Ky. or any such live stock consigned to any individual, partnership, firm or corporation at said Central Stock Yards Ky., or at said Central Stock Yards Station Ky., or via, the Southern Railway Company in Kentucky, destined to said yards or Station, and that it also be required whenever so requested by the consignor and consignee or owner of said stock, at any of its stations, to recognize the right of said parties to change the destination of said shipment, and that it be required to change said destination and make delivery thereof at one of the points of physical connection between the tracks of said defendant's line and the tracks of the Southern Railway Company in Ky., for delivery by the said Southern Railway Co., at the Central Stock Yards Station, Ky., or to whomsoever there consigned and further prays that until notice is given and hearing had upon the application for an injunction, that

this honorable Court grant unto plaintiff a restraining order
518 as herein prayed, and to be effective until this honorable Court can make decision upon the said motion for an injunction and plaintiff prays for a judgment herein against the defendant for the sum of Three Thousand ($3000.00) Dollars and upon final hearing, for a perpetual injunction as prayed herein, and for all such other necessary and proper relief, the premises considered.

May it please your Honors to grant unto plaintiff a writ of subpœna to be issued from the Clerk's office of this Court, directed to the said Louisville and Nashville Railroad Company and commanding it to appear herein and full and true answer make to Complainant's Bill but not under oath, the answer under oath being waived, and your complainant will ever pray.

DODD & DODD AND
WM. SMITH,
Att'ys for Plaintiff.

519 UNITED STATES OF AMERICA,
Western District of Kentucky, sct:

On this, the 11th day of January 1902, before me, personally appeared B. H. Hurt who says that he is the Chief Officer and President of the Plaintiff, the Central Stock Yards Co., and made solemn oath that he had read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information a- belief, and as to those matters he believes it to be true.

B. H. HURT.

Subscribed and sworn to before me by B. H. Hurt the 11th day of January 1902.

HENRY F. CASIN,
U. S. Court.

520 In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Amended Bill.

And now comes the plaintiff and with leave of the Court first had and obtained, amends its bill of complaint herein as follows:—

1. Your orator the Central Stock Yards Company, respectfully represents to this Honorable Court that since the enactment by the Congress of the United States of the Act known as "An Act to regulate Commerce" passed February 4th, 1887, and Amendments thereto, the Commonwealth of Kentucky had, by Constitu-
521 tional provisions and Legislative enactments, in aid of Commerce, imposed certain duties upon all common carriers, and

that by mandatory self-executing Constitutional requirement of the Commonwealth of Kentucky all railroad Companies organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, or doing a railroad business in this State are required to receive, transfer, deliver and switch empty or loaded cars, and to move, transport, receive, load or unload all freight in car loads or less quantities coming to or going from any railroad, transfer, belt line, bridge or siding thereon with equal promptness and dispatch, and without any discrimination as to charge, preference, draw back or rebate in favor of any person, corporation, consignee or consignor in any manner as to payment, transportation, handling or delivery, and that all railroad companies doing business in this State shall so receive, deliver, transfer and transport all freight from any to any point where there is a physical connection between the tracks of said companies; and further, under the constitution and laws of the State of Kentucky, it is made unlawful for any railroad, transfer,
522 belt line, or railway, bridge Company to make any exclusive or preferential contract or arrangement with any individual, association or corporation for the receipt, transfer, delivery, transportation, handling care or custody of any freight, or for the conduct of any business as a common carrier, and that the act and conduct of the defendant complained of in its original bill are in violation of the Constitution and Laws of the State of Kentucky, and it pleads and relies thereon in aid of the Act of Congress of the United States, known as "An Act to regulate Commerce."

Wherefore, the plaintiff prays as in its original bill, and for all such other necessary and proper relief the premises considered.

——— ———,
——— ———,
. Attorney for Plaintiff.

523 United States Court of Appeals, Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

Submitted May 16th, 1902; Decided July 8th, 1902.

Before Lurton, Day, and Severens, Circuit Judges.

This is a bill filed by the Stock Yards Company against the railroad company seeking a mandatory injunction requiring the railroad company to receive, transfer, transport and deliver shipments of live stock tendered to it outside the State of Kentucky, consigned or tendered to be consigned to any points of physical connection be-
524 tween its line and the line of the Southern Railway Company in Kentucky; and designated for the Central Stock Yards or

its station in Kentucky; and in like manner to deliver, transport and transfer such consignment to any person to whom it may be billed at said stock yards; and further to recognize the right of the consignor and the consignee to change at any of the stations of the said company, the destination of said shipment, so as to make delivery in the manner agreed upon at a point of physical connection between the lines of the Southern Railway Company and the Louisville and Nashville Railroad Company for delivery to said Central Stock Yards; also seeking a temporary injunction and damages in the sum of three thousand dollars.

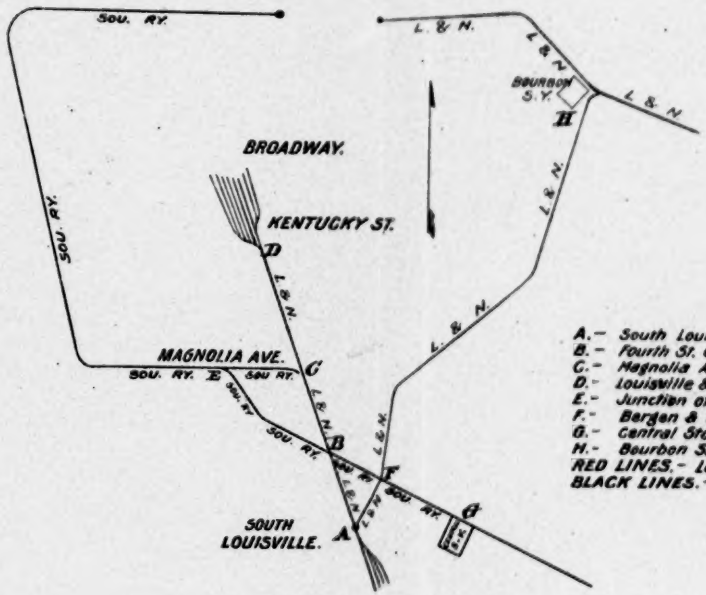
The Central Stock Yards Company is a duly organized corporation authorized to conduct a general business in the State of Kentucky. The Louisville and Nashville Railroad Company operates in the States of Kentucky, Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida, Indiana and Illinois, as a common carrier. The Central Stock Yards Company has located its plant just outside the City of Louisville, where it has facilities for receiving, unloading, feeding and caring for live stock. This plant is about nine miles from the terminus of the Southern Railroad in the City of Louisville. It is further alleged that the Southern Railway Company has established a station, known as the "Central Stock Yards," at or near the location of the plant. The situation may be shown in a general way by the rough draft herewith shown.

525

(Here follows diagram marked page 526.)

SOU. RY.
L. &
BROADWAY.
KENTUCKY ST.
D
L & N.
SOU. RY.
MAGNOLIA AVE.
SOU. RY.
E
SOU. RY.
G
L & N.
SOU. RY.
SOU. RY.
B
SOU. RY.
L & N.
A
SOU. RY.
L & N.
L & N.
SOUTH
LOUISVILLE.
A

No-268
L.V.N. R.R.Co } 6.526
vs.
Cudahy Stock
Yards Co



A.— South Louisville.
B.— Fourth St. Crossing Southern Ry. & Louisville & Nashville.
C.— Magnolia Avenue connection.
D.— Louisville & Nashville Kentucky St. Yards.
E.— Junction of two Southern Railway Lines.
F.— Bergen & Meehan Switch.
G.— Central Stock Yards.
H.— Bourbon Stock Yards.
RED LINES.— Louisville & Nashville Railroad.
BLACK LINES.— Southern Railway.

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527 The points of physical connection between the lines of the Southern Railway Company and the lines of the defendant are shown at F, B and C of the diagram. The defendant company refused to receive stock from points outside the State of Kentucky, billed to the Central Stock Yards Company or to any person in its care, asserting the right to deliver all live stock designated for Louisville passing over its own lines at the Bourbon Stock Yards, shown on the map at H, with which company the defendant has a contract, the Louisville and Nashville Railroad Company agreeing that it would not lease, rent or sell within the City of Louisville for the establishment of any other stock yards, or establish any other stock-yards within or adjacent to said City. That it will deliver, and cause to be delivered, so far as it legally may, all live stock shipped over the lines of the defendant company consigned to the City of Louisville; and will load all stock for other persons at said City at said yards, providing that if the terms of such agreement
528 should be invalidated by any judgment or order of the court, or by legislative requirement, then the stock yards company should have no claims for damages against the railroad company arising out of the terms of the contract.

The Central Stock Yards Company is a corporation, and was established by an agreement with the Southern Railway Company, making it the stock yards of that company in Louisville and vicinity. It is claimed that the complainant has a right to compel the shipment of live stock and transfer of cars consigned to the Central Stock Yards Company at one of the points of physical connection with the Southern Railway upon three grounds:

1. That such is the legal duty of the defendant company as a common carrier.

2. Because of the requirements of the Act to regulate commerce, passed by the Congress of the United States on February 4th, 1887, known as the "Inter-state Commerce Act."

3. By amended bill, that such is the duty of the corporation under the Constitution and laws of the State of Kentucky.

The Circuit Court dismissed the application for a tem-
529 porary injunction, and afterwards dismissed the bill for want of jurisdiction in equity. Complainants appeal.

DAY, *J.*, delivered the opinion of the Court:

The discussion in this case has taken a wide range. In our opinion it may be disposed in the solution of a few leading propositions, the first being, is there a right independent of a statute, to require the railroad company to receive the live stock for shipment to the Central Stock Yards Company and to deliver the cars at a point of connection with the Southern Railroad in Louisville for transportation thereto.

It is apparent from a consideration of the testimony that the Central Stock Yards Company is primarily the stock yards of the Southern Railway Company. It is true the location is just beyond the city limits, but the business to be transacted is the Louisville business in

the sale and forwarding of stock in these yards. The contra
through which the Central Stock Yards originated is in the record
and there we find an agreement between the Southern Railwa
530 Company and the Central Stock Yards Company in which
recited the desire of the railroad company to establish a ge
eral stock depot "for the receiving and delivery of stock at Loui
ville, Kentucky." After stipulations as to the reception and ca
of the stock, it is further provided that the railroad company wi
establish the premises of the stock yards company as its stock depo
for the purpose of handling live stock to and from Louisville, an
agrees not to sell, lease or use or license to be used any part of i
ground in or adjacent to Louisville for the establishment of an
other stockyards, in or otherwise facilitate the establishment of an
other stockyards in the city, and will establish no other stock yar
depot at or near said City. The railroad company further agre
to establish Louisville rates to and from the premises of the said Co
pany on certain lines. It is apparent from these stipulations of th
contract that the parties understood that the Central Stock Yar
was intended to be, as in fact it is, a Louisville stock yard
531 to be used, as is recited in the contract, in building up the li
stock business to and from Louisville. We have no questio
that the Central Stock Yard is as distinctly a yard for the transactio
of the business of receiving, keeping and selling of stock at Loui
ville as is the Bourbon Stock Yards, established for the same purpo
by contract with the defendant company. The question on th
branch of the case is thus narrowed to the consideration of the righ
of the complainant to require of the Louisville and Nashville Ra
way Company shipments and transfers to the Central Stock Yar
Company over the connection with the Southern Railway, of li
stock whose destination is Louisville. The peculiar duties of a co
mon carrier of live stock are pointed out by Mr. Justice Field i
North Penn. R. R. Co. *v.* Commercial Bank of Chicago, 123 U. S
727. The animals cannot be turned loose or left without food
shelter in cars standing on the railroad tracks or sidings. They mu
be placed in suitable quarters where they can be fed and cared f
under the charge of competent agents. The nature of the proper
requires these services, essential to the discharge of the du
532 of the carrier in the safe transportation and delivery of li
stock. For this purpose it is the duty of the carrier to mak
provision by suitable yards and proper equipment and competent pe
sons to manage and control the care and delivery of the live stoc
We perceive no reason why this duty cannot be discharged by co
tract with proper persons or companies who shall undertake th
same under the responsibility of the carrier. Such a contract w
enforced in Terre Haute, R. R. Co. *vs.* Struber, 109 U. S., 38
Justice Harlan observed in Stock Yards Company *vs.* Keith, 1
U. S., 128-36:

"It did not concern them (the complainants) whether the railro
company duly maintained stock yards or employed another co
pany or corporation to supply the facilities for receiving and deliv
ing live stock it was under the obligation to the public to provide

There is no showing of the inadequacy of the Bourbon Stock Yards Company in the matter of accommodation for receiving and caring for cattle. The defendant has there made provisions ample for the care of such stock with a company obligated to dis-
533 charge the duties in this behalf required by the law or common carriers. Is the defendant obliged by law to make Louisville delivery at other points by making connections for other Louisville stock yards? We think this question must be answered in the negative. To all intents it was so answered by this Court in Butchers' and Drovers' Stock Yards Company *vs.* Louisville and Nashville Railroad Company, 67 Feneral 35. In that case the railroad company had entered into a contract with the Union Stock Yards Company which made it the stock-yards depot of the Louisville and Nashville Railway Company at Nashville. A spur track had been run down Front Street in Nashville for the accommodation of freight shippers not handling live stock. About forty feet from this track the Butchers' and Drovers' Company established an independent stock yards. The Butchers' and Drovers' Company sought, a mandatory injunction to compel the railroad company to build or allow to be built, a side tract connecting the spur track with the complainant's stock yards, there to deliver and receive cattle consigned or shipped by the complainant. The obtaining of the right
534 of way and the expense of building the side track were not required of the defendant company and are not elements essential to the disposition of the case in the opinion rendered by Judge Taft. The contention of the railroad company, that, having established a live stock depot in Nashville, for the reception and delivery of stock in that city, it could not be compelled to receive and deliver from another depot in the City, was sustained. Judge Taft quotes from the opinion of Judge Harlan in Stock Yards Company *vs.* Keith, 139 U. S., 128, as follows:

"We must not be understood as holding that the railroad company in this case was under any legal obligation to furnish, or cause to be furnished, suitable and convenient appliances for receiving and delivering live stock at every point on its line in the City of Covington where persons engaged in buying, selling or shipping live stock choose to establish yards. In respect to the mere loading and unloading of live stock, it is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the
535 business at that city. So far as the record discloses, the yards maintained by the appellant are, for the purposes just stated, equal to all the needs, at that city, of shippers and consignors of live stock, and, if the appellee had been permitted to use them without extra charge for mere "Yardage," they would have been without just grounds of complaint in that regard, for it did not concern them whether the railroad company itself maintained stock yards, or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under obligation to the public to furnish. But as the appellant did not accord to appellees the privilege they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stock yard of its own for

shippers and consignees, the Court below did not err in requiring the railroad company and the receivers to receive and to deliver live stock from and to the appellees at their stock yards in the immediate vicinity of the appellant's yards, when the former were in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish. It was not within
536 the power of the railroad company, by such agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

We think this language is no less applicable to the case under consideration. The Louisville and Nashville Railway Company has by contract arranged for the discharge of its duties to shippers of live stock at the Bourbon Stock Yards. The proof does not show that these accommodations are inadequate or the charges illegal. It would doubtless be convenient and promote the business of dealers and shippers if other facilities were afforded, but we find in the law, nothing aside from a positive statute, that requires more ample provision at the hands of the respondent.

It is further alleged in the bill that the refusal to make the desired shipping and transfer of stock to the yards of the complainant is a violation of section three of the Interstate Commerce Act, which provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give undue or unreasonable
537 preference or advantage to any particular person, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving forwarding and delivering of passengers and property to and from their respective lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The claim is that, having granted certain rights and privi-
538 leges to the Bourbon Stock Yards Company, this section guarantees equal privileges to the Central Stock Yards Company. This construction of the act is not sustainable. It is the duty of the railroad company to provide reasonable facilities for the unloading and care of live stock. This duty it might discharge by itself furnishing sufficient facilities, or it might contract with others to make such provision. The respondent has chosen the latter course. By contract with the Bourbon Stock Yards Company it has provided facilities for the care of stock received at Louisville. These

facilities cannot be denied to some and afforded to others. But this is far from saying that it was the purpose of the law to dictate to common carriers the means by which it shall discharge its obligations to shippers. To hold otherwise would be, having regard to the present case, to require the railroad company to make connections with as many stock yards companies as may see fit to provide facilities equal to those furnished by the company or its agents. This would be carrying the act far beyond its terms and purposes. Kentucky and I. Bridge Co. *v.* Louisville and N. R. R., 73 Fed.
539 eral 621.

These considerations dispose of this branch of the case. If it could be regarded as one involving the right to require one railroad to interchange traffice with another, the position of the complainant would be equally untenable. At common law a railroad company is only bound to transport freight to its own terminals. The rule is thus stated in A. T. and S. F. R. R. *v.* Denver N. O. R. R. Co., 110 U. S., 41:

"At common law a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of his contract, and if he holds himself out as a carrier beyond his line, so that he may be required to carry for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the half of others, than he would occupy if the means of transportation em-
540 ployed were all his own. He certainly may select his own agencies and his own associate for doing his own work."

It is averred in the bill that the Southern Railway Company has notified the respondent that it would be and now is willing to be responsible from points of physical connection with the Louisville and Nashville Railroad for the delivery of such live stock and the collection of all charges on the same and would promptly return to such points of connection all empty cars, and would account for all freight charges collected in the usual way. This may be true, and would possibly be a reasonable arrangement. But have the Courts the right in the absence of statute, to dictate to carriers the contracts they shall make in the inter-change of traffic, and to require such to be carried out as the Courts may deem reasonable? The billing and transfer of freight from outside points over the two railroads is a matter of arrangement between them. The proportion of the joint tariff each shall receive, the handling of cars, the liability of one to the other and other matters are to be determined by the con-
541 tract between the parties. Each controls its own railroad and may determine for itself upon what terms it will unite in a joint tariff. No arrangement exists with the Southern Railroad for the transportation and delivery of cars of live stock to the Central Stock Yards, if that can be assumed to be a station on the line of the Southern Railroad, nor do we think a Court of equity has the power to make one and supervise its execution, nor has this right been con-

ferred upon the Courts by the Inter-state Commerce Act. This doctrine is so thoroughly established as to require no more than the citation of the authorities in support of it: A. T. & S. Railway Company *v.* D. N. O. Railroad, 110 U. S. 667; Express Cases, 117 U. S., 1; Pullman Palace Car Company *v.* Missouri Pac. Ry. Co., 115 U. S., 587; N. Pac. Railroad *v.* Dustin, 142 U. S., 492; Kentucky & I. Bridge Co. *v.* Louisville and Nashville R. R., 37 Fed., 567; L. & N. R. R. Co. *v.* St. L. M. R. R., 41 Fed., 559; Oregon Short Line Co. *v.* N. P. R. R., 51 Fed., 475; St. L. Drayage Co. *v.* L. and N. R. R. 65 Fed., 38; Allen and Lewis *v.* Oregon R. and Nav. Co., 98 Fed., 16.

542 It is further alleged that the duty of complying with the complainant's demand rests upon the defendant company, because of the requirements of the Constitution of the State — Kentucky and the laws passed in pursuance thereof. Assuming, without deciding, that the Kentucky Constitution and Legislature require the defendant company to receive, deliver, transport and transfer freight to any point that is in physical connection with the tracks of another company, so that the complainant has, as to traffic originating in Kentucky, the right to require that the shipment be received and transported in accordance with the prayer of the bill, the question remains, have the Kentucky Constitution and statutes any operations beyond the limits of that state? The inter-state commerce clause of the federal constitution has given rise to much litigation and frequent construction by the Supreme Court. It is thoroughly settled with the power of Congress to regulate commerce is plenary, and no State has the right to regulate purely inter-state commerce.

543 On the other hand, the state has the right to make provisions as to matters within its own boundaries intended as aids to commerce, not thereby regulating inter-state traffic. Without undertaking to reconcile or consider the numerous decisions we may refer to the County of Missouri *v.* Kimball, 102 U. S. 691. Mr. Justice Field, with his usual clearness, has called attention to the sound rules of construction to determine what is and what is not within the power of the State:

"Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined, and its local aids or instruments or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase sale and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the

544 authority which can act for the whole country can alone adapt such a system. Acting upon it by separate states is not, therefore, permissible." (Page 702.)

It is within the power of a state to require connecting tracks between two railroad companies at an intersection for the transfer of cars used in the local business of such lines of railroad. This may

have been necessary for the accommodations of State commerce. Wisconsin R. R. *v.* Jameson, 179 U. S., 287. So it is competent for a state to require a railroad company to stop a certain number of trains each day at stations having a certain number of inhabitants, within the State. Such regulations do not interfere with the delivery of transportation of passengers traveling between states in such wise as to be regulations affecting inter-state traffic. The statute simply amounted to requiring three trains of the company to stop at the station named each day. Lake Shore *v.* Ohio, 173 U. S., 123. Likewise a State may require a telegraph Company to deliver a message. Western Union *vs.* McJames, 162 U. S., 650.

But it is thoroughly well settled that a state may not regu-
545 late inter-state commerce, using the terms in the sense of intercourse and the interchange of traffic between the states.

In the case at bar, we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction it would follow it could regulate inter-state commerce. This it cannot do.

We reach the conclusion that no case was made in the bill justifying the relief prayed for, and that there was no error committed dismissing the bill.

Judgment affirmed.

546 At a Court held on the 30th day of April, 1904:

The Court being advised, delivered a written opinion, which is ordered to be and is now filed and made a part of the record herein.

Said opinion filed herein on the 30th day of April, 1904, is as follows, to-wit:

547 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Opinion.

This action, as now finally heard, is not materially different in its controlling points, from the case as it appeared when first tried upon affidavits and a motion for a temporary injunction. What then appeared by affidavits now appears by depositions in a somewhat amplified, but not a substantially different way. Upon the original hearing, a written opinion was filed covering the case as then presented: And in view of that fact, counsel upon final argument, treated the questions of law therein passed upon, as final in this Court, and addressed their arguments to other questions. Since the case
548 was submitted, however, the Supreme Court of the United States has (February 23rd, 1904) decided a case between the

same parties and pending thereupon appeal from a judgment of the United States Circuit Court in a suit brought under the Inter-state Commerce Act of 1887 and subsequent to the institution of this action. By supplemental brief, it is urged for defendant that this decision of the United States Supreme Court is conclusive of this case; not, however, in the sense that it is *res judicata,* but that it is an adjudication directly in point. It is clear, however, from an examination of the opinion that it does not have the force of a precedent directly in point, for the Court expressly said that neither a construction of the constitution of Kentucky nor of the interstate Commerce Act was necessary in deciding the case, but that the case was decided upon law principles. The opinion says:

"For the purposes of decision we assume without expressing an opinion, that if the Act of Congress and the Kentucky Constitution apply to the case they both confer rights upon the plaintiff. As to the former compare Secs. 8, 9 and the Act of February 19th, 1903, c. 708, Sec-. 2, 32, Stat. 847, 848, Covington Stock Yards Co.
549 *vs.* Keith, 139 U. S. 128; Kentucky & Indiana Bridge Co. *vs.* Louisville & Nashville R. R. 37 Fed. Rep. 567, 610, 620. The rights under the latter, which are relied upon especially, could not be established without discussion. Compare Atkinson *vs.* Newcastle Waterworks Co., 2 Ex. Div. 441; Johnston *v.* Consumer's Gas Company of Toronto, (1898) A. C. 447. For the same purpose we further assume that such rights as the plaintiff has may be enforced by Bill of Equity. See Interstate Stock Yards Co. *v.* Indianapolis Union Railway, 99 Fe*b.* Rep. 472. We also lay on one side the question whether the section of the Constitution of Kentucky is or is not invalid as an attempt to regulate Commerce among the States. For we are of opinion that the defendant's conduct is not within the prohibitions or requirements of either the Act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed.

We have discussed the case as if the two Stockyards were side by side. They were not, but they were both points of delivery
550 for cattle having Louisville as their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which carriage to another station in the same City by another road fairly might be regarded as *bona fide* further transportation over a connecting road and within the requirements of the Kentucky Constitution. However that may be, we are of opinion that the Court below was entirely right, so far as appears, in treating this as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side.

The case was treated as an ordinary "stockyards" case under the common law principles as announced in Covington Stock Yards *v.* Keith, 139 U. S. 128, and no attempt was made to apply either the Constitution of Kentucky or the Interstate Commerce Act, except to say that the case as there presented, did not necessarily come within the provisions of either law, and that the case was to be decided outside of both of them. In dealing with the two stock-yards "as if

they were side by side" the Supreme Court ignored the im-
551 portant fact, which is fully shown by the defendant, in this case at least, that the two stock-yards are about four miles apart by an air-line, and are fully five miles or more apart by rail, via 7th and Magnolia Streets—the most direct route. The original opinion in this case pointed out that this was a "switching case" under Section 213 of the State Constitution, as distinguished from a stock-yard case" under common law principles and therefore construed the Constitution in applying it. In treating the case before it as a "stock-yard case" the Supreme Court gave to the facts of this case an effect sufficient to differentiate it from this case upon its facts as found by this Court.

And, although the facts of the two cases may have been substantially the same, the construction to be given by the Court of Appeals of Kentucky to the Constitution of Kentucky will be binding both upon this Court and upon the United States Supreme Court in so far as its ordinary application to state affairs is concerned. (L.
552 & N. R. R. *vs.* Commonwealth 20 Ky. L. Rep. 1386; L. & N. R. R. *vs.* Com. 21 Ky. L. R. 232; 106 Ky. 633: same case upon appeal in 183 U. S. 503.)

In the case last cited the United States Supreme Court unanimously held that the construction put by the Kentucky Court of Appeals upon section 218 of the Kentucky Constitution by which a different effect is given to it than is given to similar language in the Inter-state Commerce Law, is binding upon the Supreme Court of the United States in a case governed by the State Constitution.

As stated in the original opinion, I am of opinion that this case is controlled by Section 213 of the State Constitution; which Section has not been construed either by the Kentucky Court of Appeals or by the United States Supreme Court. Under this state of affairs, what should be the course of this Court? Should it ignore the Constitution and treat it as inapplicable because the Supreme Court has done so in a similar case? Or should I treat the question as an open one, to be finally settled by our Court of Appeals? In L. & N. R. R. Co. *vs.* Commonwealth 104 Ky. 226, 241; 20 Ky. L. R. 1386, a similar case in principle, the Court of
553 Appeals said:

"Counsel have cited Texas Pacific R. *v.* Interstate Commerce Commission, 162 U. S. 197, and Interstate C. C. *v.* Alabama Midland R. C., recently decided by the Supreme Court of the United States, in which, construing Section 4 of the Interstate Commerce Act, substantially like Section 218, it was held that when difference of rates between two points of shipment is the ground of complaint competition is a leading element to be considered; though in each case the Court was divided. The Interstate Commerce Act was intended to operate not within limits of a State merely, but between and through States. And whatever construction that high tribunal may put upon Section 4 of that act, we, in exercise of the province belonging to the Supreme Court of each State to construe its own laws, have endeavored to so construe Section 218 as not to kill it."

In view of the contrary positions of the Kentucky Court of Appeals and the United States Supreme Court upon these fea-
554 tures of the State Constitution it is only reasonable to assume that the Court of Appeals will adhere to its position; and as its ruling in this general question is binding both upon this Court and the United States Supreme Court, I feel constrained to adhere to the original opinion in this case.

2. Considerable testimony has been taken tending to show that the actual cost of switching from 7th and Magnolia to the Central Stock-yards is $1.55-8/10 or more, per car while the switching rate or fee is only $1.00 per car. It is somewhat difficult, however to appreciate the relevancy of this fact to the case. The switching charge was voluntarily reduced by the defendant, first from $3.00 to $2.00 per car, and subsequently from $2.00 to $1.00 per car, which is the present charge complained of. This case does not seek to either fix or regulate defendant's switching charges. Defendant interchanges freight at 7th and Magnolia with the Kentucky and Indiana Bridge Company; the Baltimore and Ohio Southwestern Railroad; The Chicago, Indianapolis & Louisville Railroad, and the Southern Railway; and at 7th and Ormsby ("Hub Track") It Like-
555 wise interchanges with the Illinois Central Railroad, and with the Louisville, Henderson & St. Louis Railroad.

The defendant switches for all these roads at a uniform charge of $1.00 per car, and only objects to switching live stock to the Central Stockyards, because and upon the ground, that by so doing it is helping a rival to the Bourbon Stock-Yards which is the live stock depot of the defendant. But as the price or charge for the service is fixed by the defendant, it cannot reasonably complain that it is not re*numer*ative.

2. It is further claimed that to require defendant to switch cars for other roads or persons, requires it to perform a "Transfer" business, instead of a transportation business, and that such a requirement would compel defendant to turn over its cars and terminal facilities to the care of other persons; and that this amounts to a taking of defendant's property without due process of law.

In speaking of defendant's charter and its relation to State
556 the United States Supreme Court uses this language in L. & N. R. R. Co. *v.* Commonwealth of Kentucky, 183 U. S. 513.

"When the citizens of Kentucky voluntarily seek and obtain a grant from the State of a charter to build and maintain a public highway in the form of a railroad it would seem to be evident that it takes, holds and operates its road subject to the Constitutional inhibition we are considering, and are without power to challenge its validity. It may be that in a given case, a railroad company may be able to show that the State had disabled itself from enforcing the provision by a contract previously made, and it may be that cases may arise in which the provision cannot be enforced because operating as an unlawful interference with commerce between the States. Indeed, those very positions are taken by the plaintiff in error, in this case, and will receive our attention hereafter. But apart from

such contentions and looking only at the case of a company voluntarily formed to carry on business wholly within a State we are unable to see how such company can successfully contend that it can be exempted by the Courts from the operation of the Constitution of the State.

557 It is said that, while it is true that Railroad Companies receive their rights to exist and to maintain their roads from the State, yet that their ownership of such roads is property and, as such, is protected from arbitrary interference by the State. But, though it be conceded that ownership in a railroad is property, it is property of a kind that is subject to the regulations prescribed by the State."

If the Constitution can properly require defendant to switch cars, it is immaterial as to what name the business may be called—whether it be a transportation or a transfer business. If the Constitutional Convention was acting within its powers, it is not for this Court to criticise the wisdom or policy of the Convention. If it had the power to require a railroad company to do a transfer business, the Courts cannot say that it ought not to have been done.

It will be noticed that Section 213 *supra* includes transfer companies as well as railroad and other carrier companies. The switching contemplated does not require defendant to per-

558 mit other roads to use its tracks but it may require defendant to switch its cars upon other tracks and to thus be used in the switching. This, I think may be done as incidental to the operation of a railroad as was pointed out upon authorities cited in the original opinion. If a railroad can be compelled as a part of its public service, to take the cars of another road over its line as was held in the Williams case (95 Ky. 199), it would certainly follow that it could be required to switch its own cars upon the track of another road for delivery purposes. One requirement would in principle be as much a taking of property as the other. Switching, as here claimed, is a mere incident to the transportation of goods and requires only a necessary, and not an unreasonable use of cars in the delivery of freight after its transportation has been practically completed. As was pertinently said by Mr. Justice Brown in the late case of Minneapolis and St. Louis Railway Company *vs.* Minnesota Railroad and Warehouse Commission 186 U. S. 261 "it is impossible for the State to exercise this power of regulation without interfering

. to some extent, with the power of a railway to contract either

559 with its customers or connecting lines."

It is elementary "that the company takes and holds its franchises and property subject to the conditions and limitations imposed by the State in its "Constitution. Munn *v.* Illinois 94 U. S. 113; Davidson *v.* New Orleans 96 U. S. 97; Railroad Commission cases 116 U. S. 307;" (L. & N. R. R. *vs.* Kentucky 183 U. S. 516). That compulsory switching is not an unreasonable or an unusual use of the cars of one company by another, is made plain by the "per diem" agreement filed in this case whereby the railroads of the country, including the defendant, have agreed upon a uniform

charge or rental for their cars when used by other roads. The sw
ing clause of the Constitution, when enforced only requires th
fendant to do what it has already agreed to do, and is willing t
and is voluntarily doing for all roads that do not require live
to be switched to the plaintiff's yards. The switching service doe
participate in the through freight rate of the carrier, a
560 delivering its cars to other roads for delivery purpose
carrier road having received its entire freight to the poi
delivery, gets the switching service gratis. The switching road
additional pay for the switching service. The authorities cited i
original opinion abundantly sustain the proposition that the
may require this minor use of its rolling stock as a part of the
ditions upon which the carrier holds its charter. I have menti
the matter of the violation of switching charges and through fr
rates because it has appeared principally in the testimony w
has been taken since the original opinion was filed.

4. As the immediate purpose of this action and the injun
issued herein, related to the delivery of six specified car loads of
stock shipped from a point in Kentucky to Louisville, Kent
the effect of a general order upon shipments coming to Loui
from points in other States was neither argued by counsel nor
sidered by the Court when the order was originally en
561 By appropriate amendment, however, the plaintiff now
an enlargement of the order of injunction so as to ma
apply to all shipments by requiring the defendant, whenev
quested by the consignor and consignee or owner of stock at a
its stations, and particularly at the break-up yards in South L
ville, Kentucky to recognize the right of said parties to stop the
erty *in transitu* and to change the destination of said shipment
that defendant be required to change said destination and
delivery of said cars at one of the points of physical connectio
tween the tracks of defendant's lines and the tracks of the Sou
Railway Company for delivery by that road, to the consignee
Central Stock Yards station.

The right of the parties to exercise the right of stoppage *in tr*
and the supplemental right to change the destination, were
sidered and recognized in the second opinion filed January 2nd,
in passing upon the question of contempt for violating the ord
injunction, and were not argued upon this final submission
in so far as the exercise thereof might affect interstate
562 merce. It is objected, however, by defendant that the
cannot constitutionally so enlarge the order of injun
because it would operate as a regulation of interstate comm
either directly by requiring the defendant to "switch" cars,
have come to this State from other States, in the same way t
may require a switching of cars which have brought stock fr
point within the State, or, indirectly, by requiring defenda
recognize the right to change the destination of cars which
brought stock to Louisville from points beyond Kentucky, a
switch them after they have arrived in Louisville. This obj
presents two interesting questions:

1. Is this local switching a part of commerce between States? And (2) if it is, is the requiring it to be done, by the State Constitution, such a regulation of commerce as to constitute a violation of the clause of the Federal Constitution which confers upon Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes?"

That a mere switching movement after the main trip has
563 been completed, and for delivery purposes is a part of commerce between States, may well be doubted. Mr. Justice Miller in referring to the difference between State and interstate Commerce said:—

"It may be thus stated: That the power to regulate commerce is one which includes many subjects various and quite unlike in their nature, that whenever subjects of this power are in their nature *national,* or *requires one uniform system or plan* of regulation, they may be justly held to belong to that class over which Congress has the exclusive power of legislation; but that *local and limited matters,* not national in their character, which are most likely to be wisely provided for by such diverse rules as the localities and the authorities of the different States may deem applicable, may be regulated by the legislatures of those States in the absence of any act of Congress upon the same subject."

(Lectures on the Constitution, p. 454.)

If plaintiff were asking that the defendant be required to switch
cars passing through Louisville for further transportation in
564 other States, it might be contended that it was interstate commerce; but in the case at bar, where the switching is a mere delivery at the end of the trip and for final purposes, isn't a purely local and limited matter which cannot possibly affect further transportation?

Leaving that question open, however, and conceding for the sake of the argument, that the switching is a part of commerce from a shipment made, say in Tennessee, is a forbidden regulation of that commerce?

When Mr. Madison's attention was called, near the close of the Convention of 1787, to the scope and meaning of the phrase "to regulate commerce" in connection with the proposition to restrain the States from laying tonnage duties without the consent of Congress, he said, "These terms are somewhat obscure"; but in revising his remarks, he made them read, "these terms are *vague,* but seem to exclude this power of the States." (Documentary History of the Constitution, 111 752: Madison's Papers 111 1585.)

Nevertheless, the Convention did not agree with Mr. Madison, and
the express prohibition upon State tonnage duties was carried
565 and inserted in the instrument—the Convention evidently being of opinion that the power of Congress to regulate commerce among the States, did not, *ex vi termini,* preclude the States from levying tonnage duties. This interesting bit of information constitutes about all of the debate upon the scope and meaning of this important clause. Indeed the express power to regulate commerce did not appear either in the Virginia Plan presented by Gov-

ernor Randolph at the opening of the Convention, or in the ninetee
resolutions Reported to the Convention by the committee of th
Whole on June 13th, after a two weeks' debate upon the Virgini
Plan. When the report of the committee had been further debate
by the house for six weeks longer, and was, on July 26th, referred
the Committee of Detail in twenty-three resolutions to draft a Co
stitution, the commerce clause did not yet appear. It first appeare
on August 6th, in the draft of a Constitution by the Committee
Detail and in substantially the form in which it now stands in th
Constitution. It thus appeared to have come into the Co
566 stitution after all the principal features of it had been thr
times debated, and the wording of it was given little or n
discussion.

(Meigs's "The growth of the Constitution," 135.)

It is not a matter of surprise, therefore, that considerable co
fusion of thought and difference of opinion has arisen in applyi
this important constitutional power. The great subject of railro
transportation was wholly unknown to the framers of the Constit
tion. Foreign and coasting trade were their chief concern and we
carried on entirely by means of sailing vessels." "And it is a ma
ter of public history that the object of vesting in Congress the pow
to regulate *Congress* with foreign nations and among the States w
to *insure uniformity of regulation against conflicting and determi
ing State legislation.*" (Mobile County *v.* Kimball, 102 U. S. 691
For some time several of the States had been making commerci
war upon each other. Connecticut threw her ports wide open
British shipping, but laid a duty upon imports from Massachuset
Pennsylvania discriminated against Delaware. New York
567 quired every little market boat loaded with garden truck fr
New Jersey to pay entrance fees and obtained clearances
the Custom House just as was done by the great ships from Londo
and while all firewood from Connecticut was compelled to pay
heavy duty. New Jersey retaliated by levying a confiscatory
upon New York's light house located on Sandy Hook, while Co
necticut suspended all commercial intercourse with her greedy neig
bor. It was such bickerings as these that largely influenced the ca
ing of the Federal Convention, and this certainly brought abo
the adoption of that part of the commerce clause that confi
to Congress the regulation of commerce among the States. T
cardinal idea and intention was to put an end to all laws where
any one State was discriminating against the citizens of other Sta
and in favor of its own citizens. As a part of this regulation
Commerce, it necessarily followed that goods carried from one St
into another State, or through a second and third State should
be impeded or obstructed while passing through upon
568 journey. But there are certain rights known as the pol
power of the State which the State may nevertheless exerci
although it may interfere with interstate commerce. State la
regulating quarantine, inspection, pilotage, wharfage and pub
convenience and for the protection of the lives, health, morals, saf
and property of its people are of this class.

The opinion of Chief Justice Marshall in Gibsons *v.* Ogden, 9 Wheat 1 (1824), and the opinion of Mr. Justice Curtis in Cooley *v.* The Board of Wardens of the Port of Philadelphia, 12 How. 299 (1851), contain the reason and the philosophy of the law upon this subject. These opinions are in accord with the evidence intention of the framers of the Constitution; since Story says it was moved, in the Convention to amend the article so as to give Congress "the Sole or exclusive" power over Commerce, but that the proposition was rejected by the vote of six States against five. (Comm. on Constitution, Sec. 1067. Note.) (See Russell's "Police Power of the State," 1900.)

Furthermore, "the power of the State by appropriate legislation to provide for the public convenience stands upon the same
569 ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government is to be determined by the same rules." (Lake Shore & M. S. R. Co. *v.* Ohio, 173 U. S. 285-300.) (Hennington *v.* Georgia, 163 U. S. 299.)

Referring to laws of this character in Gibsons *v.* Ogden, 9 Wheat., 1, 203, (1824) Chief Justice Marshall said:

"No direct general power over these objects is granted to Congress, and consequently they remain subject to State Legislation. If the Legislative power of the Union can reach them it must be for National purposes; it must be where the power is *expressly given for a special purpose*, or if *clearly incidental* to some *power* which is *expressly given*. It is obvious that the Government of the Union, in the exercise of its express powers,—that, for example, of regulating commerce with foreign nations and among the States,—*may use means that may also be employed by a State in the exercise*
570 *of* its acknowleged powers; that, for example, of regulating commerce *within* the State. If Congress license vessels to sail from one port to another in the same State, the act is supposed to be necessarily incidental to the power expressly granted to Congress and implies no claim of a direct power to regulate the purely internal commerce of a State, or to act directly on its system of police. So, if a State, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, *it does not derive its authority from the particular power which has been granted to Congress, but from some other which remains with the State*, and *may be executed by the same means*. All experience shows that the same measures are measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other *so nearly as to be confounded*, there are other situations in which they are sufficiently distinct to etsablish their individuality. In our com-
571 plex system, presenting the rare and difficult scheme of our general government whose action extends over the whole, but which possesses only certain enumerated powers; and of numerous State

governments which retain and exercise all powers not delegated to the Union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective governments to execute their *acknowledged* powers would often be of the same description, and might sometimes interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

The foregoing passage is an excellent general chart for use in all cases of this character. It is frequently, however, quite difficult to distinguish between domestic and interstate commerce, or where one ceases and the other begins or what constitutes a regulation of commerce. The chief Justice evidently had such cases in mind when he said that "although the means used in their execution may
572 sometimes approach each other so nearly as to be confounded there are *other situations* in which they are sufficiently distinct to establish their individuality."

In Livingston & Fulton *v.* Van Ingen, 9 Johns, 507 (1812) Chief Justice Kent, in reviewing the Commerce Clause of the Federal Constitution, said:—

"Upon the principles above laid down, the States are under no other constitutional restriction, and are, consequently, left in possession of a vast field of commercial regulation; all the internal commerce of the State by land and water remains entirely, and I may say exclusively, within the scope of its original sovereignty. The Constitutional power relates to external not to internal commerce, and it is confined to the regulation of that commerce. To what extent these regulations may be carried, it is not our present duty to inquire. The limits of this power seem not to be susceptible of precise definition. It may be difficult to draw an exact line between those regu-
lations which relate to external and those which relate to
573 internal commerce, *for every regulation of the one will directly or indirectly affect the other.* To avoid doubts, embar-assment and contention on this complicated question, the general rule of interpretation which has been mentioned, is extremely salutary. It removes all difficulty, by its simplicity and certainty."

Most of the State regulations of interstate commerce which have been determined to be obnoxious to the Federal Constitution, relate to either navigation; taxes or charges in transportation in some one of its forms; fixing of unreasonable compensation for services; discriminations against other States; duties on tonnage; and duties on imports and exports.

The case under consideration is relieved of most of these difficulties. No tax burden, discrimination or charge is imposed; the regulation consists merely of a police regulation intended by the State to conserve the public interests in the aid of commerce.

In applying the rule to these other situations, it is still, sometimes quite difficult to establish the individuality of the one or the
574 other power which has been constitutionally exercised, or whether the thing or act regulated is domestic or interstate commerce. The line of distinction is frequently quite shadowy and difficult of determination. Thus, in W. U. Tel. Co. *v.* Texas, 105

U. S. 460, the sending of telegraphic messages from one State to another was interstate commerce; and in Robbins *v.* Shelby Co. Tax. District 120 U. S. 489 a drummer "going from State to State making sales by sample," was likewise engaged in interstate commerce, while in Hopkins *v.* U. S. 171 U. S. 578, 601, a solicitor going from one State to another state and procuring goods to be shipped back to the first State for sale, was not engaged in interstate commerce. There nevertheless are some well settled rules of construction, which may aid us very materially in the determination of the case in hand, though they do not control it directly. Assuming that the thing or act regulated belongs to the category of interstate commerce and that the regulation is not a permissible police regulation, the regulation must, nevertheless, be a burden upon or an impediment
575 to the interstate commerce instead of an aid of facility to it, and it must, furthermore, affect it directly and not merely by indirection.

In Mobile County *v.* Kimball, 102 U. S. 691, Mr. Justice Field said in reviewing the early contention that the right of Congress to regulate interstate commerce was exclusively and not concurrent with the right of the States to do so in the absence of congressional action, and of the final conclusion that it depended upon the nature of the subject to be regulated, said:

"Perhaps some of the divergence of views upon this question among former Judges may have arisen from not bearing in mind the distinction between commerce as *strictly* defined, and its local aids or instruments, or Measures taken for its improvement. Commerce with foreign countries and among the States strictly considered, consist in intercourse and traffic, including in those terms navigation and the transportation and transit of persons and prop-
576 erty, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined, there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as *thus defined* may not be inaccurate, *when it would be so if applied to legislation upon subjects which are merely* auxiliary to commerce."

In N. Y., N. H. & H. R. R. Co. *v.* New York, 165 U. S., 628, the question was as to the validity when applied to interstate trains, of a New York statute forbidding the heating of passenger cars in a particular mode. The Court said:—

"The Statute in question is not directed against interstate commerce. Nor is it within the necessary meaning of the Constitution a regulation of commerce, although it controls in some degree, the conduct of those engaged in such commerce. So far as it
577 may affect interstate commerce, it is to be regarded as legislation *in aid of commerce* and enacted under the power remaining with the State to regulate the relative rights and duties, of all persons and corporations within its limits."

Hopkins *v.* United States 171 U. S. 578 was an action for the disso-

lution of the Kansas City Live Stock Exchange; and although it was brought under the Anti-Trust Act of 1890 it became necessary for the Court to first determine whether the business of the Exchange was interstate Commerce; and in that respect the opinion is useful in this case in the course of the opinion Mr. Justice Peckham said:

"We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this Court? Or is it a business which is *an aid or facility to commerce* and which, if it affect interstate commerce at all, does so only in an indirect and incidental manner?

* * * An agreement may in a variety of ways affect in-
578 terstate commerce, just as State legislation may, and yet, *like it*, be entirely valid, because the interference produced by the agreement, or by the legislation is not direct. (Case cited.)

* * * * There must be some direct and immediate effect upon interstate commerce in order to come within the act * * * Many agreements suggest themselves which relate only to facilities furnished commerce or else touch it only in an indirect way, while possibly enhancing the cost of transacting the business, and which at the time we would not think of as agreements in restraint of interstate trade or commerce. They are agreements which in their effect *operate in furtherance and aid of* commerce, by providing for it facilities, conveniences, privileges, or services, but which do not directly relate to charges for its transportation, nor to any other form of interstate commerce. * * *

The effect upon the commerce spoken of must be direct and proximate (N. Y., L. E. & W. R. Co. *v.* Pennsylvania 158 U. S. 431).

* * * Facilities may consist in privileges or conveniences pro-
579 vided and made use of, or in services rendered in aid of commerce as well as in the use of tangible property, and so long as they are facilities and the charges not unreasonable an agreement relating to their amount is not valid * * * *In* charges of the nature described do not amount to a regulation of interstate trade or commerce because they touch it only in an indirect and remote way, or else because they are in the nature of compensation for the use of property or privileges as a mere facility for that commerce, it would for a like reason seem clear that agreements relating to the amount of such charges, among those who furnish the privileges or facilities, are not in restraint of that kind of trade. While the indirect effect of the agreements may be to enhance the expense to those engaged in the business, yet as the agreements are in regard to compensation for privileges accrued for services rendered as a facility to commerce or trade, they are not illegal as a restraint thereon. * * *

Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning
580 of the term. We know from the cases decided in this Court that it is a term of very large significance. It comprehends, as it is said intercourse for the purposes of trade in any and all of its forms, including transportation, purchase, sale and exchange of

ommodities between the citizens of different States, and the power to egulate it embraces all the instruments by which such commerce ay be conducted. (Cases cited.)

But in all the cases which have come to this court there is not one hich has denied the distinction between a regulation which directly ffects and embraces interstate trade or commerce, and one which is othing more than a charge for a local *facilty* provided for the trans-ction of such commerce. On the contrary the cases already cited ow the existence of the distinction and the validity of a charge for he use of the facility."

In L. & N. R. R. Co. *v.* Kentucky, 161 U. S. 677, 701, the State njoined a proposed agreement for the consolidation of the appel-nt's road with certain other railroads, which extended through Kentucky into the State of Tennessee. It was contended that section 201 of the Kentucky Constitution which forbade the pur-
81 chasing of competing railroads, is a regulation of interstate commerce and therefore void.

In answering that contention, Mr. Justice Brown, speaking for the ourt, said:

"But little need be said in answer to the final contention of the laintiff in error, that the assumption of a right to forbid the con-olidation of parallel and competing lines is an interference with the ower of Congress over interstate commerce. The same remark may e made with respect to all police regulations of interstate railways. *ll such regulations interfere indirectly, more or less with commerce etween the States,* in the fact that they impose a burden upon the nstruments of such commerce, and add something to the cost of ransportation, by the expense incurred in conforming to such regu-ations. These are, however, like the taxes imposed upon railways nd their rolling stock, which are more or less according to the policy of the State within which the roads are operated, but are still
82 within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises nd receipts from interstate commerce, which are treated as a direct urden. There are certain intimations in some of our opinions. hich might perhaps lead to an inference that the police power can-ot be exercised over a subject confined exclusively to Congress by he Federal Constitution. But while this is true with respect to the ommerce itself, it is not true with respect to the instruments of ommerce. * * * It has never been supposed that the dominant ower of Congress over interstate commerce took from the State the ower of legislation with respect to the instruments of commerce, so ar as the legislation was within its ordinary police powers. Nearly l the railways of the Country have been constructed under State uthority, and it cannot be supposed that they intended to abandon heir power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such
83 regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the ivision of authority with respect to interstate railways Congress re-rves to itself the superior right to control their commerce and to

forbid interference therewith; while to the States remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

In Louisville & Nashville R. R. Co. *v.* Kentucky, 183 U. S., 503, 518, the appellant contended that section 218 of the Kentucky Constitution prohibiting a road from charging more for a short haul of freight than for a long one, was void because it interfered with interstate commerce. Upon that point Mr. Justice Shiras, in speaking for a unanimous Court, said:

"The final contention, that section 218 of the Constitution of Kentucky operates as an interference with interstate commerce,
584 and is therefore void, need not detain us long.

It is plain that the provision in question does not in terms embrace the case of interstate traffic. It is restricted in its regulation to those who own or operate a railroad within the State, and the long and short distances mentioned are evidently distances upon the railroad line within the State. The particular case before us is one involving only the transportation of coal from one point in the State of Kentucky to another by a corporation of that State. It may be that the enforcement of the State regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may *somewhat affect commerce generally;* but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government, to be unlawful, *must be direct,* and not the mere incidental effect of enforcing the police powers of a State (N. Y. L. &
585 W. R. Co. *v.* Pennsylvania, 158 U. S., 431; Henderson Bridge Co. *vs.* Kentucky, 168 U. S. 150). A discussion of this subject will be found in the opinion in this Court in Louisville & Nashville R. R. Co. *v.* Kentucky, 161 U. S. 701, where the same conclusion was reached."

It would seem sufficient to rest the decision of the case at bar upon the authority of the two cases last above quoted, for it is difficult to distinguish between them, in principle. If a car loaded with coal is a mere instrument of interstate commerce which Section 218 of the Kentucky Constitution can regulate as to charge for hauling it while traversing the State, it is equally plain that a car loaded with cattle is also a mere instrument of commerce and can be switched at its destination under Section 213 of the same Constitution. The latter instance is a no greater exercise of the police power, than the former, if, indeed it can be said to be as great. The appositeness of the coal case, however, to the case at bar, consists in the fact that the instrument of commerce in the two cases, is identical. In each case the corporation is the same, is a creation of the State of Kentucky and the regulation is intended as an exercise of its police power
586 for the benefit of its citizens. Nor is there any distinction between the case of a railroad Company incorporated before and that of one incorporated after the constitutional enactment. "As has been said of the one so it may be said of the other, that the charter is taken and held subject to the power of the State to regulate and

control the grant in the interest of the public" (183 U. S. 517) (Pa. R. R. *v.* Miller, 132 U. S. 75: Louisville Water Co. *v.* Clark, 143 U. S. 1: L. & N. R. R. Co. *v.* Kentucky, 161 U. S., 677).

Lake Shore & Mich. Southern R. R. Co. *v.* Ohio, 173 U. S. 285 (1898) is an interesting case and bears upon the question. There, the State of Ohio by Statute, required railroad Companies to stop at least three of their trains going each way, (if so many were run) at every city having over three thousand inhabitants. A train belonging to defendant and going from New York to Chicago having failed to stop as required by statute, suit was brought to recover the penalty prescribed for the breach of the Statute. It was contended that the statute was void, as a regulation of interstate commerce.

After a review of all the leading cases upon the subject, Mr.
587 Justice Harlan, in delivering the opinion of the Court, said:

"Consistently with these doctrines it cannot be adjudged that the Ohio statute is unconditional. The power of the State by appropriate legislation to provide for the public convenient stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety whether legislation of either kind is inconvenient with any power granted to the general government is to be determined by the same rules.

In what has been said we have assumed that the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, does not go beyond the necessities of the case, and is not directed against interstate commerce. * * * In our judgment the assumption that the statute of Ohio was not directed against interstate commerce, but is a reasonable provision for the public convenience, is not unwarranted. The requirement that a rail-
588 road Company whose road is operated within the State shall cause three each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted to stop at any station, City or Village of 3,000 inhabitants, for a time sufficient to receive and let off passengers, so far from being unreasonable, will greatly observe the public convenience * * * We perceive in the legislation of Ohio no basis for the contention that the State has invaded the domain of national authority or impaired any right secured by the National Constitutional. In the recent case of Jones *v.* Brim, 165 U. S. 180, 182, it was adjudged, that embraced within the police powers of a State was the establishment, maintenance and control of public highways, and that under such powers reasonable regulations incident to the right to establish and maintain such highways could be established by the State. And the State of Ohio by the statute in question has done nothing more than to so regulate the use of a public highway established and maintained under its
589 authority as will reasonably promote the public convenience.

It has not unreasonably obstructed the freedom of commerce among the States. Its regulations apply equally to domestic and interstate railroads. *Its statute is not directed against interstate commerce, but only incidentally affects it.* It has only forbidden one of its own corporations from discriminating unjustly against a large part of the

public, for whose convenience that corporation was created and invested with authority to maintain a public highway within the limits of the State."

What has there been said applies with equal force to the case under consideration. The Kentucky Constitution is not directed against interstate commerce, but only incidentally affects it, in the exercise of the police power of the State, as against a corporation of its own creation and for the convenience of the public. That the State has abundant power to do so, is established by the following decisions which I will merely cite, in addition to those already referred to, viz:

Sherlock *v.* Alling, 93 U. S. 99; Morgan's L. & T. R. & S. S.
590 Co. *v.* Louisiana Board of Health, 118 U. S. 455; Smith *v.* Alabama, 124 U. S., 465; Nashville C. & St. L. Ry. Co. *v.* Alabama, 128 U. S. 96; Mo. K. & T. Ry. Co. *v.* Haber, 169 U. S. 613. They are all cases involving State regulations more or less affecting interstate or foreign Commerce, but were sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce.

Counsel for defendant rely upon Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 203 (1885) in support of their contention that "delivery is a part of interstate commerce, and cannot, therefore, be regulated by the State Constitution. An examination of that case, however, will show at once that it has little or no application to the case under consideration. The Ferry Company, a New Jersey corporation, was engaged in interstate commerce between Camden, New Jersey, and Philadelphia, Pennsylvania, and had no property in Pennsylvania except a lease of a dock for landing purposes. The State of Pennsylvania levied a tax upon its capital stock, and it was held that the Ferry Company had no property within the
591 State of Pennsylvania except the lease of its wharf and that only could be taxed in Pennsylvania. There was no question of police power involved, and there was an attempt to tax the shares of a foreign corporation—not its tangible property within the limits of the State. McReynolds *v.* Smallhouse, 8 Bush, 447, 458, is more nearly in point. Moreover, the mere switching of a car, at its destination, cannot with accuracy be said to be in fact a part of or a regulation of an interstate shipment. The trip has ended and the car has only to be side tracked or switched for the Southern road to deliver it to the plaintiff. It contemplates a new service wholly within the State of Kentucky.

In Chicago M. & St. P. Ry. Co. *v.* Becker, 32 Fed. Rep. 849, 854, the plaintiffs sought an injunction to restrain the Minnesota Railroad and Warehouse Commission from enforcing a regulation fixing switching charges in the City of Minneapolis, upon the ground that switching of cars coming from other States was a part of interstate commerce. The Courts however, rule differently, saying:

592 "This brings me to the *principal question* involved in this controversy. It is claimed by the complainant that the order of the commission set up in the bill *is a regulation* of *interstate commerce,* and imposes no obligation to obey it, and consequently the attempted enforcement should be restrained. The supporting affi-

davits show that the cars switched by the complainant in the majority of cases are loaded with goods and merchandise destined to points *outside* the limits of the State of Minnesota. The complainant alleges that three fourths of the traffic is interstate commerce. If this is so, it is not important. The underlying question presented is, does the order of the State commission regulate interstate commerce? I find no warrant for the claim advanced that it is an interference with or regulation of, interstate commerce, and encroaches upon the powers of the Federal Government. It is true that the loaded cars switched contained freight to be transported to other States, or received from other States, *we* well as local freight for or from points within the State of Minnesota; but unless the
593 switching service is performed by the complainant, and cars are transferred from a shipper's warehouse or mill to be transported out of the State over a line of railway other than its own, no charge is made. The case presented is this: In order to afford facilities to shippers, the complainant has constructed short lines of road, or side tracks or switches, so called, from its yard or depot or main lines, running over and across the streets and highways to the various mills and manufacturing establishments in the City of Minneapolis; and its switches are so built as to enable it to take cars from the shippers at the mills, and deliver them to other lines of railway, or deliver cars to consignees received by it from other roads. When this service is performed, and the cars are to be transported from the City of Minneapolis over other roads, and when cars coming into that City over other roads are taken by the complainant over its own switches, and delivered to other roads *are* to consignees, a charge of one dollar and fifty cents per car is exacted for this switching service rendered, which is claimed to be reasonable and just, but if the cars are to be transported over its own line
594 to the point of destination or come into the City over complainant's main road, the service is free, and this separate and distinct charge, when made, is only for this local switching. This charge is not a part of the through rate fixed and determined beforehand, and has no reference to interstate shipment. The transportation of cars over the switches from the warehouses or mills to the depot, or from the depot to these mills, can be regulated in many respects by the commissioners, and the rate for performing the service fixed by virtue of the police power of the State in the same manner as the carriage by dray per load or distance is established for the public good, and I see no difference in the principle to be applied in such cases, although, incidentally, they may be connected with interchange commerce. The *service is local,* and there is nothing upon the face of the order of the Commissioners indicating that it is intended to regulate interstate Commerce, even if it is conceded that this carrying of freight over the switches is an act of in-
595 terstate commerce, it does not necessarily follow that the order of the commission affecting this traffic is in violation of the Constitution of the United States. It is not every act that *affects* such commerce that amounts to a *regulation* of it, and this order of

fixing the price per car for service rendered, to which the order applies, is not related to the contract for carrying the freight outside the limits of the State of Minnesota, and is not a part of it."

Again, in State of Iowa *v.* Chicago M. & St. P. Ry. Co. 33 Fed., 391, 395 we have another Pacific switching case in which Judge Shiras said:

"What then are the questions arising in the present controversy? The proceeding itself is one instituted by the State of Iowa under the provisions of an act of the State legislature passed for the purpose of providing a legal method of enforcing the conclusions or orders of the State Board of railroad commissioners. The particular order was one made by the Commissioner- which in effect holds that certain side and spur tracks, laid down over the streets and alleys
596 of the City of Dubuque are, under the laws of the State of Iowa and the ordinances of the City of Dubuque, *public highways,* and not the private property of the defendant Company, and that for the reasons set forth in the Commissioners' opinion the defendant Company was under legal obligation to pass, over such side and spur tracks, *the cars of other companies,* when such passage became necessary in order to enable the other companies to reach the factories or warehouses of their customers, and the Commissioners also fixed the rates to be charged for the work to be done by the Company when thus engaged in performing this switching. It is clearly apparent, from this brief statement, that the complainant does not base the right asserted and sought to be enforced against the Company upon any part of the Constitution or laws of the United States. But on the contrary, to establish the right if any such exists, dependence must be had upon the State laws and ordinances of the City of Dubuque, coupled perhaps with principles of general jurisprudence, not depending for their existence or authority upon the Federal Constitution or laws. The Federal question, if any exist,
597 must be sought, then, in the defense or defenses interposed by the defendant, and substantially it is claimed that the action of the commissioners is a violation of the federal constitution in that it *is a regulation of interstate commerce.*

Can it be fairly said that if the State of Iowa, by direct legislative action, or through the power conferred upon the City of Dubuque, has provided that certain railway tracks laid down in and over the public streets of the City of Dubuque, shall be and remain public highways, open to the use of every railway coming into Dubuque that it was thereby regulating interstate commerce, and exercising a power prohibited by the Federal Constitution? When the State of Iowa, and the City of Dubuque under its authority, gave permission to the defendant Company to lay down tracks along certain streets, or to use those already laid down, upon condition that such tracks should be public and open to the use of the citizens of Dubuque, how did it regulate interstate commerce, or place any burden,
598 hindrance, or restriction thereon? But it is said that the State, through the agency of its commissioners, is seeking to fix the rate to be charged for the switching required to be done by the defendant, and that thereby interstate commerce is affected and

regulated, because the cars thus switched may be filled with merchandise, or other property brought *from other States* into Iowa, or intended to be carried from Iowa into other states. It will be noted that the operations of the defendant company, when engaged as a common carrier of persons or property either wholly in Iowa, or between Iowa and other States, are not in any manner affected or regulated, *either as to the mode of carriage, or to the price to be paid,* by the order of the Commissioners. The argument is that the property conveyed by the other railway companies may form part of the commerce between the States, and that in this way fixing the rate to be charged by the defendant company will affect the rate for the entire transportation. The duty imposed upon the defendant com-
599 pany is that of passing the cars of the other defendant companies over the side and spur tracks in question, all of which are included within the limits of the City of Dubuque and within the boundary of the State of Iowa."

(See also Minneapolis — St. Louis R. R. Co. *vs.* Minnesota, 186 U. S. 257.)

Applying the clear line of authority laid down in the foregoing decisions—and particularly that of the Kentucky cases—to the facts of this case, I do not see how the conclusion can be avoided that section 213 of the Kentucky Constitution requiring a switching of cars, is a valid exercise of the police powers of the State for the convenience of its citizens, that it is not intended to affect interstate commerce, and so far as it may be affected thereby it will be merely incidental and indirect, and that it is not such a regulation of interstate commerce as is prohibited by the federal Constitution.

SHACKELFORD MILLER, *Judge.*

April 30th, 1904.

600 At a Court held on the 19th day of May, 1904:

This action having been heard and submitted in chief, and the Court being sufficiently advised delivered a written opinion herein, which is filed and made a part of the record herein, and in pursuance thereto it is ordered and adjudged:

First. That the exceptions of the defendant to the depositions of the witnesses, B. S. Josselyn, B. H. Young and E. A. Billington, be, and each of them are overruled; to which the defendant excepts.

Second. That the defendant, Louisville and Nashville Railroad Company, be, and it is hereby perpetually enjoined and restrained from neglecting, failing or refusing to receive at any of its stations in Kentucky, and it, the said Louisville and Nashville Railroad Company, is hereby required and compelled to receive at any and all of its stations in Kentucky, including the Bourbon Stock Yards, its station in Louisville, and ordered to bill, transport, transfer, switch and deliver in the customary way at one of its most conven-
601 ient and practical points of physical connection between its tracks in Louisville, Kentucky, and the tracks of the Southern Railway Company in Kentucky at Louisville, Kentucky and particularly at the connection of the tracks between the said two rail-

way companias at Seventh and Magnolia Streets, any and all live stock, or other freight, consigned to the Central Stock Yards, or to any person, firm or corporation at Central Stock Yards, Kentucky, or to any person, firm or corporation at Central Stock Yards, Kentucky, via: the Southern Railway Company in Kentucky at Louisville, Kentucky for the Central Stock Yards Company, or any commission merchants, person or persons, corporation or corporations, or individuals, doing business thereat, for transportation and delivery by the said Southern Railway Company in Kentucky to the said Central Stock Yards Company at Central Stock Yards Kentucky, or any person or persons at said station, or in care of the Central Stock Yards Company at said station; and the said defendant is
602 further ordered and directed to transfer, switch, and deliver to the said Southern Railway Company in Kentucky at Louisville, Kentucky, and at the said point of physical connection between the tracks of the two systems at Seventh and Magnolia Streets in Louisville, Kentucky, any and all live stock or other freight coming over its lines in Kentucky consigned to Central Stock Yards Company, or any person or persons, or corporations at Central Stock Yards, Kentucky, or to any person in care of the Central Stock Yards Company at said station for transportation and delivery by the said Southern Railway Company in Kentucky at Louisville as so billed and consigned; and the defendant, Louisville and Nashville Railroad Company is hereby perpetually enjoined and restrained from neglecting, failing or refusing to receive, and it is hereby required and compelled to receive at one of the points of physical connection between the tracks of the said Southern Railway Company, in Kentucky, at Louisville, Kentucky, and the tracks of the said
603 Louisville and Nashville Railroad Company, and particularly at the Seventh and Magnolia Connection; and to then promptly transfer, switch, transport and deliver all live stock in car load lots, or less quantities, to whomsoever consigned at the Bourbon Stock Yards and the live stock depot of the Louisville and Nashville Railroad Company at Louisville, Kentucky, the shipment of which originates at the Central Stock Yards, on the line of the Southern Railway Company in Kentucky, and consigned by any person, persons, partnership or corporation at the live stock depot of the said defendant, Louisville and Nashville Railroad Company, to-wit: the Bourbon Stock Yards Company, Provided, that defendant shall not be required to receive, bill, transport, transfer, switch or deliver live stock or other freight as aforesaid, unless at the time such live stock or other freight is offered to defendant its proper charges for the services demanded of it be paid or tendered to it whenever said charges are demanded by said defendant.

And it is further ordered that the defendant, Louisville and
604 Nashville Railroad Company, be, and it is required whenever *to* requested by the consignor, consignee or owner of said stock at any of its stations, and particularly at its break-up yards in South Louisville, Kentucky, to recognize the right of the said consignor and consignee or owner to change the destination of said shipment, and upon payment of the full Louisville freight rate, and that the de-

fendant — required to change said destination and make delivery thereof at one of the points of physical connection between its tracks and the tracks of the Southern Railway Company in Kentucky at Louisville for delivery by the said Southern Railway Company to the Central Stock Yards Company at Central Stock Yards, Kentucky, or to any person, firm, partnership or corporation doing business at said Central Stock Yards Station, upon the payment of the full Louisville Kentucky freight rate, and the presentation and surrender to defendant of the bill of lading or carriage contract for the shipment referred to, by the person shown thereby to have the right to receive from defendant the said shipment, or his agent with
605 the endorsement of the consignee upon the said bill or contract.

It is further ordered and adjudged that the plaintiff, do have and recover of the defendant, Louisville and Nashville Railroad Company, its costs herein expended, for which it may have execution.

606 At a Court held on the 19th day of May, 1904:

Defendant Louisville and Nashville Railroad Company, objects and excepts to the judgment this day entered herein, and among other grounds of objection says that said judgment, and the Constitution and Statutes of Kentucky as construed and enforced thereby, deprived defendant of its property without due process of law and are in effect a regulation of commerce among the several states, contrary to the provision of the Constitution of the United States

And said defendant pray- an appeal from the judgment to the Court of Appeals of Kentucky, which is hereby granted.

Then came defendant and moved the Court to suspend the injunction granted by said judgment, during the pendency of the appeal therefrom, and if the Court shall not see fit to suspend the entire injunction, then to suspend that part thereof which is granted by the following terms in said judgment, to-wit:

"And it is further ordered that the defendant, Louisville and Nashville Railroad Company, be, and it is required whenever
607 so requested by the consignor, consignee or owner of said stock at any of its stations, and particularly at its break-up yards at South Louisville, Kentucky, to recognize the right of the said consignor and consignee or owners to change the destination of said shipment and upon payment of the full Louisville freight rate and that the defendant be required to change said destination and make delivery thereof at one of the points of physical connection between its tracks of the Southern Railway Company in Kentucky at Louisville, for delivery by the said Southern Railway Company to the Central Stock Yards Company at Central Stock Yards, Kentucky, or to any person, firm, partnership or corporation doing business at said Central Stock Yards Station, upon the payment of the full Louisville, Kentucky freight rate, and the presentation and surrender to defendant of the bill of lading or carriage contract for the shipment referred to, by the person shown thereby to have the right to receive

from defendant the said shipment or his agent with the en-
608 dorsement of the consignee upon the said bill or contract."

And in case the Court shall refuse to suspend the injunction as hereby requested, then defendant moves the Court to provide in said judgment that the Status existing immediately before the entry of the said judgment shall be maintained pending an application to the Court of Appeals or a Judge thereof for such suspension.

The Court being sufficiently advised, overruled said motion to suspend any part of said injunction pending the appeal from the judgment; to which defendant excepts.

But at request of defendant it is hereby ordered that the status existing immediately prior to the entry of the said judgment shall be maintained pending an application to the Court of Appeals or a Judge thereof for such suspension, but not longer than for twenty days; to which plaintiff objects and excepts.

609 STATE OF KENTUCKY, *County of Jefferson, set:*

I, W. L. Weller, Clerk of the Jefferson Circuit Court, in and for the County and State aforenamed, do hereby certify that the foregoing 356 pages contain a full, true and complete transcript of the record and proceedings in the case wherein the Central Stock Yards Company is plaintiff and the Louisville and Nashville Railroad Company is defendant, commencing with the order of December 9th, 1901, and concluding with the order of May 19th, 1904, with the exception of a notice filed on the 19th day of December, 1901, which is missing from the papers and cannot be copied, an action lately pending in the aforesaid Court, Chancery Branch, First Division, No. 30269, as the same appears of record and now on file in my said office.

Witness my hand, as aforesaid, this 27th day of May, 1904.

W. L. WELLER, JR.,
Clerk of the Jefferson Circuit Court,
By JNO. H. PAGE,
Deputy Clerk.

Transcript Fee $77.05.

610 Jefferson Circuit Court, Chancery Branch, First Division.

No. 30269.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Vol. #1.

The Depositions of R. C. Watkins, J. W. McCampbell, Charles Byrne, S. A. Stalcup, Edwin Fitzgerald, B. S. Josselyn, T. C. Powell (affidavit), Thomas Welsh, H. B. Spencer, Bennett H. Young, A. Philbrick, E. A. Billington, and J. A. Ashcraft, Jr., for Plaintiff.

April 2, 1903.
Depos. for Plaintiff.
Rec'd from Alonzo Walker, Official Stenog. before whom taken and filed.
Attest:
JNO. H. PAGE, *Clerk*,
By P. K. ALTENBUSH, *D. C.*

Filed May 30, 1904.

J. MORGAN CHINN, *Clk.*

611 Jefferson Circuit Court, Chancery Branch, First Division.

No. 30269.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

The testimony in this case coming on to be taken before me on the 4th day of February, 1903, at the office of Messrs. Dodd & Dodd, in the Louisville Trust Company Building, in Louisville, Ky., pursuant to an Order of Reference heretofore duly entered herein, the plaintiff began the introduction of its testimony, as follows:

R. C. WATKINS, called in the behalf of the plaintiff, being duly sworn and examined by Mr. Dodd, testified as follows:

1. Will you please state your name, age, residence and occupation?
A. Rush C. Watkins; age 35; residence, Louisville, Ky.; occupation Vice President and Traffic Manager of the Central Stock Yards Company.
2. How long, Mr. Watkins, have you been connected in any capacity with the Central Stock Yards Company?

612 A. Since April, 1901.

3. Is that, or not, since, or about the time of the organization of the company?

A. The company was organized April 23rd, 1901.

4. You have then, if I understand you correctly, been, in one capacity or another, connected with it since its organization?

A. Yes, sir.

5. Mr. Watkins, what was your occupation immediately prior to your connection with the Central Stock Yards?

A. I was connected with the Illinois Central Railroad.

6. In what capacity, and for what length of time?

A. I was Traveling Freight Agent for about ten years.

7. Do you know, Mr. Watkins, from your experience as a Traveling Freight Agent of the Illinois Central Railroad Company, and as Traffic Manager and Vice President of the Central Stock Yards Company, whether or not the Louisville & Nashville Railroad Company is a common carrier of live stock?

A. It is.

8. For what length of time has the Louisville & Nashville Railroad Company been carrying live stock from various points on its line to whatever may have been the point of destination of such live stock?

613 A. I would judge, from the beginning of the operation of the Louisville & Nashville Railroad.

9. Mr. Watkins, it is alleged in the petition by the Central Stock Yards Company herein, and not denied, that said Central Stock Yards Company has facilities for loading and unloading, caring for and keeping, and making sales of live stock at its plant, and that until required by the orders of this Court herein, the defendant, the Louisville & Nashville Railroad Company refused to receive, bill, transport, transfer and switch or deliver any live stock so tendered to it to the Southern Railway Company for delivery by the Southern Railway Company to the Central Stock Yards Company, although the Louisville & Nashville Railroad Company had a point or points of physical connection between its tracks and the tracks of the said Southern Railway Company in Kentucky, all of which is admitted under the pleadings; but it is denied that its said refusal to so bill, transport, transfer switch and make delivery of live stock to the said Southern Railway Company for delivery to the Central Stock Yards Company has been of any damage to the Central Stock Yards Company. I wish you would state whether or not the acts and conduct of the Louisville & Nashville Railroad Company have resulted in any damage to the Central Stock Yards Company, and to the persons doing business thereat; and if so, to what extent?

614 A. It has damaged the Central Stock Yards Company and the persons doing business there in many thousands of dollars.

10. Did the Louisville & Nashville Railroad Company ever bill, transport, transfer, switch and deliver to the Southern Railway Company any live stock tendered to it for delivery at the Central Stock Yards Company, or any person thereat, except under order of Court.

A. They have not.

11. Do you know whether they have refused to do so, until compelled to do so by order of Court?
A. They did.
12. In the petition, Mr. Watkins, of the Central Stock Yards Company, it is alleged that the said plaintiff company had made large investment in its plant, and had thereat commission firms or merchants dealing in live stock, and that a large number of customers of said commission merchants, handlers and dealers in live stock, desired to do business with the plaintiff, Central Stock Yards, and the commission merchants doing business thereat, and this is denied by the defendant. I wish you would state whether or not in your own personal knowledge, parties have been, to any extent deterred from doing business with the Central Stock Yards and the commission merchants there located, by the acts and conduct of the defendants, the Louisville & Nashville Railroad Company?
A. They have been seriously handicapped by the action of the Louisville & Nashville.
13. Mr. Watkins, where the Louisville & Nashville Railroad Company has refused to bill the stock showing the destination Central Stock Yards, via Southern Railway Company, what has been necessary on the part of the commission merchants to whom the consignments were desired to be made in order to get the said live stock to the Central Stock Yards?
A. Receive the stock at the Bourbon Stock Yards, pay freight charges, have it re-loaded and billed to the Central Stock Yards.
14. Has that, or not, occasioned any delay in making delivery of the live stock to the persons at the Central Stock Yards?
A. Yes, sir; a very serious delay.
15. Well, what effect has that upon the live stock as to shrinkage or loss of weight, if any?
A. It causes the stock to shrink, and damages it in many ways.
16. Mr. Watkins, has the Central Stock Yards Company at its plant commission merchants there equipped to handle live stock consigned to them for sale at said yards?
A. Yes, sir.
17. Mr. Watkins, something has been said and claimed on the part of the defendant in its pleadings with respect to the superior facilities possessed by the Bourbon Stock Yards for handling stock as compared with the Central Stock Yards. I will ask you whether or not you are acquainted with the facilities possessed by the Bourbon Stock Yards, and if so, whether or not they are as good or superior to those possessed by the Central Stock Yards?
A. The Central Stock Yards is much more modern and convenient, and has better facilities in every way than the Bourbon Stock Yards for handling stock.
18. Approximately, what amount of money has the Central Stock Yards invested in its plant, equipments and appliances there for the conduct of a stock yard business?
A. About $200,000.00.
19. What facilities have you at the Central Stock Yards, and what benefits are given shippers of live stock of shipments to the Central

Stock Yards with respect to yardage, cost of feed &c., as compared to the Bourbon Stock Yards' charges?

A. In order to explain this more fully, I would to like to exhibit my circular No. 4, and also circular dated December 18th, on a postal card.

20. December 18th, what year?

A. 1902. which explains the benefits that have been derived and the rates now in effect as compared with the rates in effect prior to the inauguration of the Central Stock Yards.

21. I will ask you to file and make a part of your deposi-
617 tion the postal card referred to in your previous answer, and this circular No. 4 referred to and mark them for identity "Exhibit Watkins No. 1" and Exhibit Watkins No. 2," respectively?

A. I do so.

22. I will ask you, Mr. Watkins, to state whether or not the rates as mentioned in the postal marked "Exhibit Watkins No. 1," and the rates as mentioned in the circular marked "Exhibit Watkins No. 2," are now in force, and effect at the Central Stock Yards Company with respect to charges?

A. Yes, sir.

23. How do they compare relatively, Mr. Watkins, to the rates and charges made for the same character of service rendered by the Bourbon Stock Yards?

A. They are about thirty-three and a third to fifty per cent. less.

24. Mr. Watkins, some complaint is made, and the pleadings allege that great delay would be occasioned by the Louisville & Nashville Railroad Company being required to make delivery of live stock consigned to the Central Stock Yards, or persons doing business thereat, to the Southern Railway Company, at points of physical connection between the two systems for delivery at the Central Stock Yards. I will ask you what, if anything, has been done on
the part of the Central Stock Yards and the Southern Rail-
618 way to facilitate the speedy handling and prompt return of empties of the Louisville & Nashville Railroad Company in which there may have been consignments of live stock destined to and delivered to the Central Stock Yards, via Southern Railway in Kentucky?

A. The equipment of the Louisville & Nashville Railroad has been handled promptly at the Central Stock Yards, and in order that you may understand it more thoroughly, will exhibit letter from General Manager Spencer of the Southern Railway dated December 19th, 1902, and my reply dated December 20th, also notations to Superintendent Byrne, and his notation on carbon copy of my reply.

25. I will ask you to file the letter of Mr. Spencer, the General Manager referred to, and mark it "Exhibit Watkins No. 3"; also your reply to the same letter, and mark it for identity "Exhibit Watkins No. 4," and make same a part of your deposition?

A. I do so.

26. Mr. Watkins, are you, or not, a regular visitor from day to day at the Central Stock Yards?

A. Yes, sir.

27. Can you state whether or not the instructions of Mr. H. D. encer, General Manager, as contained in "Exhibit Watkins No. filed with your deposition, have been complied with?

A. They have without discrimination—they have been complied with very carefully.

28. Mr. Watkins, approximately, how long has it taken for delivery of a car turned over to the Southern Railway Company the Louisville & Nashville Railroad Company at Seventh and gnolia Streets, for the Southern Railway Company to carry that containing live stock to the Central Yards, there have the same loaded and return the empty to the point where received, at enth and Magnolia Streets?

A. From forty to sixty minutes.

29. What time, Mr. Watkins, acting under the instructions of the neral Manager of the Southern Railway Company, has the equipnt of cars of the Louisville & Nashville Railroad Company, conning live stock destined to the Central Stock Yards, been at a nd-still, or not in motion, from the time of the receipt of the said stock until the return of the empty?

A. From five to ten minutes, while unloading at the stock chute the Central Stock Yards.

30. What has been the practice or efficiency of the Southern lway Company in making prompt return, as to whether or not it detached its engine from the loaded cars brought to the Central ck Yards until after the empty was delivered at the point the same received; has there been any disconnection of the engine from the said car?

A. The engine has received the cars at Seventh and Magnolia, has not detached itself from the cars at all, but have en them to the Central Stock Yards, unloaded and taken them k immediately.

31. And to do that switching movement in making the delivery he Central Stock Yards in the manner you have described, reres, if I understand you correctly, from fifty minutes to sixty utes?

A. From forty to sixty minutes.

32. Have you received since the order of injunction granted ein, any live stock destined to the Central Stock Yards from any nt on the line of the Louisville & Nashville Railroad Company out the State of Kentucky, or outside the State of Kentucky?

A. You mean, direct?

33. Yes, direct to the Central Stock Yards, I mean?

A. No, the Louisville & Nashville takes that business to the rbon Stock Yards, and it has to be switched around.

34. In the manner you have described before?

A. In the manner I have described before.

35. Mr. Watkins, about what percentage of the live stock keted at Louisville, or at the Central Stock Yards, reaches this ket over the Louisville & Nashville Railroad, if you know?

A. From fifty to sixty per cent.

621 36. Is there, or not, any considerable portion of that stock received from points outside of the State of Kentucky on the line of the Louisville & Nashville.

A. Yes.

37. All of the stock then, if I understand you, coming over the Louisville & Nashville Railroad, where the owners of the *owners of the* stock and the point of origin on the shipment is outside of the State of Kentucky, in order to get the said stock to the Central Stock Yards for sale there, must go to the Bourbon Yards, there be unloaded, the freight charges paid, and the stock rebilled and shipped from the Bourbon Yards to the Central Yards; is that correct?

A. That is correct.

38. Do you know what proportion of the live stock reaching this market to be sold either at the Central Stock Yards or Bourbon Stock Yards over the Louisville & Nashville Railroad, is Kentucky shipments, as compared to that from points outside of the State of Kentucky, on the Line of the Louisville & Nashville?

A. About sixty per cent. of *of* the live stock business received from the Louisville & Nashville is from Kentucky, and about forty per cent. from other points.

39. You mean, other points outside of the State of Kentucky?

A. Outside of the State of Kentucky.

622 40. And what per cent. did you say was received over the Louisville & Nashville as an aggregate?

A. From fifty to sixty per cent. of the entire receipts in Louisville.

41. Mr. Watkins, from your experience as a railroad man in the manner hereinbefore indicated, I will ask you to state what the custom has been at Louisville, if you know, with respect to all railroad companies consigning stock to Louisville, or to the Bourbon Stock Yards or Central Stock Yards, with respect to making delivery from the cars within which they are contained at the time they reach Louisville; in other words, have the railroad companies permitted their cars to go to the Bourbon Stock Yards where the stock was consigned there, and to the Central Stock Yards, where the stock was consigned there; or has been the practice of the railroads, as far as you know?

A. It is not practicable to break bulk in handling live stock, therefore all cars go through to final destination—all cars containing live stock go through to final destination.

42. Where live stock is consigned to the Central Stock Yards, or persons doing business at that place, over the line of the Illinois Central Railroad Company, for instance, out of what car is that live stock delivered at the Central Stock Yards; in other words, is it de-

623 livered from the car in which it is loaded at one of the points on the Illinois Central Railroad, or is it transferred to a live stock car of the Southern Railway Company for delivery at the Central Stock Yards?

A. It is delivered in the original car.

43. How is the live stock delivered that is loaded in a Southern Railway Company car at any point on the line of that system, other

than the Central Stock Yards, that is consigned to the Bourbon Stock Yards; is that delivered from the Southern Railway Company car, or is it transferred to a Louisville & Nashville Railroad Company car, and unloaded from that car?

A. The car is delivered by the Southern Railway to the Louisville & Nashville, and unloaded in the original car at the Bourbon Stock Yards.

44. Do you know, Mr. Watkins, whether there is any point of physical connection between the tracks of the Louisville & Nashville Railroad Company in Louisville, and the tracks of any other common carrier or railway company in the rehandling of live stock, or transferring the same from the cars of the one company to the Louisville & Nashville Railroad Company, where the delivery is designed to be made at the Bourbon Stock Yards?

A. I do not.

45. Don't you know that there is no such place in the City of Louisville, or in the vicinity of the City of Louisville, wherein such transfer is made?

624 A. There is no such place, and it is not practicable to have such a place.

46. How is the live stock in the shipment thereof by railroad companies considered in its classification, meaning by that, is it regarded as perishable in its nature, like fruits and vegetables, or as dead freight?

A. It is regarded as a high class of perishable.

47. High class and perishable?

A. High class of perishable.

48. Mr. Watkins, I notice from the pleadings of the defendant, Louisville & Nashville Railroad Company, upon which this proof is taken, or the issues joined thereunder, that it is denied that daily sales are made at the Central Stock Yards. I will ask you to state whether or not daily sales are made at said yards?

A. Yes, sir; we have daily sales at the Central Stock Yards.

49. It is also denied, and an issue formed thereunder, that any of the packers in the eastern portion of the City of Louisville, who are required to get their stock at the live stock depot of the Louisville & Nashville Railroad Company, buy any live stock at the Central Stock Yards. I will ask you to state whether or not any of the packers in the eastern portion of the City of Louisville, at any point on the Louisville & Nashville Railroad Company, buy any live stock at the Central Stock Yards?

625 A. They do.

50. How is that live stock, when purchased, delivered?

A. It is loaded in cars at the Central Stock Yards, and switched to the Louisville & Nashville Railroad by the Southern, and delivered by the Louisville & Nashville to the consignees at the Bourbon Stock Yards.

51. Is that by breaking bulk in transit, or in the same car at which they originated at the Central Stock Yards?

A. In the original car.

52. Mr. Watkins, as Traffic Manager of the Central Stock Yards

Company, and as an experienced railroad operator, to some extent, is there any other feasible or practical way of making such delivery?

A. No, sir.

53. Mr. Watkins, what other common carrier or railway company, if you know of any, than the Louisville & Nashville, that claims any right to make a delivery of live stock at the point selected by the common carrier other than to a point as requested by the owner and consignor of live stock.

A. None that ever I heard of.

54. Mr. Watkins, I will ask you to state whether any of the stock sold at the Central Stock Yards is carried to any eastern point after being sold there, or any other market than the City of Louis-
626 ville?

A. You mean over the Louisville & Nashville?

55. Any road?

A. Yes, large quantities of stock sold at the Central Stock Yards is shipped east, and a good portion of that is carried by the Louisville & Nashville.

56. I will ask you then, Mr. Watkins, if at the Central Stock Yards, as a station on the Southern Railway Company, there is any discrimination against the Louisville & Nashville Railroad Company in the procurement of live stock to be shipped from that point to any eastern point?

A. None whatever.

57. I will ask you to state whether or not, if you know, the live stock received for consignment, at any point, competitive or non-competitive, on the Southern Railway, and destined to the Bourbon Stock Yards Company, would be shipped and delivered to the Louisville Railroad Company at a point of connection between the two railway systems for delivery at the Bourbon Stock Yards?

A. The Southern Railway does not discriminate in shipments of live stock as against the consignor, the stock is carried and delivered to such points or destination as is requested by the consignors,
627 either at the Central Stock Yards or the Bourbon Stock Yards.

58. If I understand your previous answers to questions, that is the policy pursued with respect to all common carriers entering the City of Louisville, excepting the Louisville & Nashville?

A. It is.

59. Mr. Watkins, as Traffic Manager of the Central Stock Yards Company, and from your experience as a railway employee or officer, what duty is performed by the Southern Railway Company in the making of delivery of cars delivered to it by the Louisville & Nashville Railroad Company, destined to the Central Stock Yards, other than a switching movement or delivery at point of destination, if there is any other character of duty performed?

A. They are responsible to the delivering line for the safe delivery of the stock, and the proper collection of charges &c.

60. Is that duty so performed under such circumstances just indicated, a switching movement, or a through routing?

A. In case of the Central Stock Yards, it is billed through to their

Louisville station; we accept regular billing from Louisville to Central Stock Yards.

61. Well, what is the rate of the Southern Railway Company to the Central Stock Yards?

A. Where from?

628 62. Any point; is it the Louisville rate, or the Central Stock Yards rate?

A. The Louisville rates apply to Central Stock Yards, Kentucky.

63. Then, Mr. Watkins, if the Louisville rate applies to Central Stock Yard, Kentucky, what would be the movement of the Southern Railway Company, or a car destined to Central Stock Yards, and delivered to the Southern Railway Company at Louisville; would it be a switching movement, or a thorough car movement?

A. It would be a connecting line movement.

64. What charges would enter into the billing of the Louisville & Nashville Railroad Company, who had billed to the Central Stock Yards stock that is delivered to the Southern Railway Company; would there be anything to be collected by the Louisville & Nashville Railroad Company for the movement from Seventh and Magnolia Streets to Central Stock Yards, Kentucky?

A. No, sir.

65. What percentage of the Louisville rate would the Louisville and Nashville Railroad Company get in that billing?

A. They would get their full Louisville rate.

66. What would be the character of movement on the part of the Southern Railway Company, and who would pay it for the service rendered in that car delivered to it by the Louisville & Nash-

629 ville Railroad Company to be unloaded at the Central Stock Yards?

A. The Central Stock Yards equalizes the Louisville rate over lines entering Louisville where there is a higher charge than the Louisville rate.

67. Well, who pays the Southern Railway Company for that service?

A. The Central Stock Yards.

68. Well, is that paid for switching, or is it through service?

A. It is paid for through service.

69. When delivered to it at Seventh and Magnolia Streets?

A. I don't understand exactly what you want in the question.

70. If the live stock is delivered to the Southern Railway Company Seventh and Magnolia Streets by the Louisville & Nashville Railroad Company, what percentage, if any, of the through rate from the point on the Louisville & Nashville Railroad to the Central Stock Yards, if any, does the Southern Railway Company obtain?

A. They do not participate in the through rate.

71. Well then, what do they get payment for, a switching service a partial through rate service?

A. They get payment for handling the car from Louisville to Central Stock Yards, Kentucky.

72. Well, is that on the through billing, or delivery service.

630 A. It is delivery service.

73. Mr. Watkins, something has been said about the delivery of cars on the part of the Louisville & Nashville Railroad Company to the Southern Railway Company at Seventh and Magnolia Streets being a requirement to compel it to part with its rolling stock and turn it over into the hands of the connecting carrier to be delivered at a point on its line at Central Stock Yards, and that the Louisville & Nashville Railroad Company has no agent to inspect the condition of the live stock when it reached the Central Stock Yards. I will ask you what are the facilities for inspection of the Southern Railway in Kentucky at the Bourbon Stock Yards, and in what respect the interchange of cars from the Louisville & Nashville to the Southern differs from the interchange of cars on the part of the Southern to the Louisville & Nashville, at Louisville?

A. They are identical.

Cross-examined by Mr. BRUCE:

74. Mr. Watkins, have you ever been an agent of the Louisville & Nashville Railroad?

A. Not a direct employee; I worked in the Louisville & Nashville office at Brownsville, Tenn., where I learned the Railway Agent's business, and telegraphy.

75. I- what capacity did you work there?

631 A. I worked as a clerk and telegraph operator.

76. When was that?

A. It was in 1880.

77. 1880?

A. About 1880, somewhere along in there.

78. You were then twelve years old?

A. It was about 1880; I was about fifteen years old.

79. I understood you to say you are now thirty-five; 1880 was twenty-three years ago?

A. Well, it might have been a little later; it was between 1880 and 1884. I was going to school at the time, and worked there extra for them, for Mr. McLaughlin.

80. You were just simply in the office at that time, trying to learn telegraphy, were you not?

A. Yes.

81. Mr. Watkins, don't you know that all the shipments of live stock that the Louisville & Nashville Railroad Company has ever carried, it has carried under special contracts, which it calls "Live Stock Contracts?

A. Yes, sir.

82. Were you ever an agent of the Southern Railway?

A. No, sir.

83. You have made statements in your deposition as to

632 whether or not the Southern Railway makes any discrimination between the Bourbon Stock Yards and the Central Stock

Yards in the transportation of live stock. How do you know what the Southern Railway does in this matter?

A. By instructions issued to its agent, and the contract we have with the Southern Railway.

84. Contract—whose?

A. The Central Stock Yards Company.

85. Will you please produce and file as part of your deposition, a copy of that contract between the Central Stock Yards and the Southern Railway?

A. I will, and mark same "Exhibit Watkins No. 5."

86. Of course, you know nothing about what the agents of the Southern Railway at its various points along its lines may, in fact, do in their dealings with shippers of live stock, do you?

A. I know that they have instructions not to discriminate against consignors.

87. You don't know anything further than that?

A. I know the instructions they have in regard to live stock.

88. You are not at the various stations of the Southern Railway around through the country where live stock is received, are you?

633 A. No, sir.

89. Therefore, of course, you cannot possibly know anything about the dealings between those various agents and live stock shippers?

A. I know there is no discrimination.

90. How do you know there is no discrimination?

A. I know that a shipper on the Southern Railway can have his stock billed to any point he desires.

91. All you know about that though is what you have stated, namely, the contract between the Central Stock Yards Company and the Southern Railway Company?

A. And the instructions issued by the Traffic Department of the Southern Railway.

92. You mean, the written or printed instruction issued by that company, do you?

A. Rates and circulars in regard to handling stock.

93. You don't know anything about the distribution of those circulars, or to whom they have been sent, do you?

A. They are sent to their agents.

94. You don't know anything about to whom they have been sent, do you?

A. They are issued to agents.

95. All that you know about it is, that you have seen what

34 purported to be a printed circular from the Southern Railway to its agents, now that is all you know, isn't it?

A. I know there is no discrimination, not only from the information I get in the way I mention, but through shippers that told me that they can handle stock any way they choose, or to any points, or to any destination they choose.

96. Then, in other words, what you know about the matter is,

you knew the provisions of the contract between the Southern Railway and the Central Stock Yards, and you have seen what purports to be a printed circular from the Southern Railway to its agents, and you have heard some shippers say that they could ship by the Southern to either yard they pleased, that is the sum and substance of it, isn't it?

A. I know that, and I see stock going nearly every day from points on the Southern Railway to be delivered to the Louisville & Nashville for the Bourbon Stock Yards.

97. You don't know anything about the destination—about the origin of that stock, where it came from, whose it was, or the conditions under which it was shipped?

A. I usually know or find out.

98. How do you know, how do you find out; you simply see a car of live stock passing in front of your establishment, how do you know where it came from, where it is going to and who it
635 belongs to?

A. I have representatives on the road who make reports to me as to the origin and destination of live stock.

99. What you learn from them then is entirely hearsay in the matter?

A. My reports from them are authentic reports.

100. Hearsay, of course? Now you have spoken of the length of time that it ordinarily takes from the time that a car load of live stock is delivered by the Louisville & Nashville Railroad Company at Seventh and Magnolia to the Southern Railway to the time that the empty car is thereafter returned to the Louisville & Nashville Railroad at Seventh and Magnolia. Now, you don't stay at Seventh and Magnolia, do you?

A. No, sir.

101. Then how can you possibly know the length of time that it ordinarily takes from the passage of a car from Seventh and Magnolia to the Central Stock Yards, and then back to Seventh and Magnolia to be delivered to the L. & N. again?

A. Through my reports.

102. Then it is entirely hearsay, isn't it?

A. It is authentic reports.

103. It is simply what your agents have told you?

A. Yes.

636 104. What commission merchants are now doing business at the Central Stock Yards regularly, having an office there?

A. You mean, the names of the firms?

105. Yes, sir?

A. McCampbell, Figg & Burnett; W. R. Crawford & Company; Kirkpatrick Bros. & Company; Martin Byrne & Company; John E. Bell & Company.

106. How long have the rates which are mentioned in your circular of December 10th, 1902, filed by you as "Exhibit Watkins No. 2" with your deposition, prevailed?

A. Those rates were made effective several months ago; I don't remember the exact date.

107. In this circular you say, "Shippers on the Southern Railway in Kentucky were given the Louisville proper rates to Central Stock Yards, Kentucky, saving them a terminal charge of $2.00 per car." Then you say as "To shippers on the St. Louis division of the Southern Railway the same terminal charge was saved, in addition to which a reduction in rates on cattle, car loads, was made, of one cent to three cents." Do you mean that that reduction of one cent to three cents was made only on the St. Louis Division of the Southern Railway, but not on the Southern Railway in Kentucky?

637 A. No, the rates on the St. Louis Division of the Southern Railway were re-adjusted upon the opening of the Central Stock Yards, and the difference between the old rates and the rates now in existence are approximately as stated in that circular.

108. Then you mean the rates on the Southern Railway in Kentucky have remained as they were before?

A. With the exception, of course, of that $2.00 terminal, that is saved.

109. But so far as the rate of transportation is concerned, that remained just the same on the Southern Railway in Kentucky?

A. In some instances the rates have been slightly reduced, from some sections.

110. Why didn't you mention that in this circular?

A. Simply because they were scattered, and I could not mention them in a kind of a blanket way.

111. Well now, you say there has been a reduction in rates on the St. Louis Division of the Southern Railway on cattle, in car loads, one cent to three cents. What does that mean?

A. That means a difference between the rate now in effect and the old rate—amounts to that.

112. One cent to three per what?

A. Per hundred pounds.

113. You mean then that the St. Louis Division of the Southern Railway charges from one to three cents less per hundred

638 pounds on cattle in car load lots, is that what you mean, than it did before?

A. Yes, the re-adjustment of their tariff made a difference of about that much.

114. What do you mean by "the re-adjustment of their tariff"?

A. The re-issue of an old tariff.

115. Well, you mean they just simply dropped their rates down that much?

A. The rates on the St. Louis Division of the Southern Railway were not lined up, and had been practically out of use, so to speak, and in reviving and re-adjusting those rates, made a difference in favor of the Louisville market to that extent.

116. If their rates were previously out of use, what was there to revise and re-adjust?

A. Their rates were in effect, of course, but not being used because there were not shipments coming in this direction, scarcely.

117. You mean over the St. Louis Division of the Southern Railway?

A. Very few.

118. Well, do any more come now than did before?

A. They do, business has been increased largely.

119. Well, prior to that time—prior to the creation of the Central Stock Yards, I understood you to say that the Southern Railway allowed its cars to go to the Bourbon Stock Yards over the L. & N., did it?

639

A. It did.

120. Then why could not cattle or stock have been brought over the St. Louis Division of the Southern Railway before the creation of the Central Stock Yards, as well as since?

A. On account of the serious delays in the terminals here, the shippers would not patronize this market.

121. The St. Louis Division of the Southern Railway enters the City of Louisville where?

A. Over the K. & I. Bridge.

122. And where did it make connection with the Louisville & Nashville Railroad?

A. Seventh and Magnolia.

123. Well, were there any greater delays for live stock coming over the St. Louis Division of the Southern Railway and going to the Bourbon Stock Yards, than on live stock coming over the Kentucky Division of the Southern Railway and going to the Bourbon Stock Yards?

A. I presume not.

124. Then how did it happen that business was brought over the Kentucky Division going to the Bourbon Stock Yards, but not brought over the St. Louis Division going to the Bourbon Stock Yards?

A. The St. Louis Division has several markets besides the Louisville market, namely, St. Louis, Indianapolis and Chicago; whereas, the Kentucky Division has to depend on the Louisville and the Cincinnati markets.

640

125. Then the effect of your explanation is, as bearing on this reduction of tariff, that the real truth is, prior to the establishment of the Central Stock Yards, the St. Louis Division of the Southern Railway really did no live stock business in Louisville?

A. They did very little.

126. And it was so little that you speak of their tariff on live stock as being out of use?

A. Well, it wasn't out of use, to use it in that term, but there was no encouragement for the shipments to come this way, and very little attention being paid to it.

127. Now, what do you mean by the reduction in rates on cattle being from one to three cents; was it one cent or was it three cents, or what was it?

A. One to three cents a hundred pounds.

128. How do you mean the reduction was from one to three cents; don't you mean the reduction was——

A. At the various stations; in lining up the rates, it might be one cent at one station, and three cents at another.

129. You mean from the point of origin of the stock?

641 A. Yes, sir.

130. To Louisville?

A. Point of origin.

131. That St. Louis Division of the Southern Railway then is the only division on which there was any reduction in rates?

A. The reduction in all these terminal charges was practically a reduction in rates to the consignor.

132. I know, but I am not talking about the reduction of terminal charges; what I mean is, outside of the question of terminal charges, the St. Louis Division of the Southern Railway is the only line on which there was any reduction in rates of transportation?

A. Well, there was a reduction on the Illinois Central.

133. Why didn't you mention that in this circular?

A. It is mentioned.

134. I don't see it. You say, "rates from all stations on the Illinois Central were reduced $2.00 per car on all classes of live stock." Is that a reduction on transportation, or a reduction on the terminal charges?

A. The Illinois Central published a through tariff to point of destination.

135. Including the terminal?

A. Including the terminal, and that rate was re-adjusted, shrinking it $2.00 per car.

642 136. By taking out the terminal——

A. The rate was shrunk $2.00 per car.

137. Well, it reduced $2.00 per — just as the Southern Railway in Kentucky reduced $2.00 per car, by taking out the terminal charge?

A. Yes, sir.

138. Well, do I understand you then that the Central Stock Yards pays that $2.00 per car?

A. No, sir.

139. What has become of that $2.00?

A. The $2.00 per car has been abandoned, no one pays that; it is saved to the shippers.

140. When the Illinois Central Railroad Company brings a car load of live stock to the City of Louisville, and it is carried to the Central Stock Yards by the Southern Railway, does the Southern Railway get nothing?

A. They get $1.00 per car for switching.

141. Who pays that?

A. The shipper.

142. It is not paid by the Central Stock Yards then?

A. No, sir.

143. And do I understand that prior to the establishment of the Central Stock Yards, the Louisville & Nashville Railroad

643 Company was paid $2.00 per car for a switching charge on stock going to the Bourbon Stock Yards, say as to stock coming to Louisville over the Illinois Central Railroad?

A. The Louisville & Nashville was paid $2.00 per car by other roads, but prior to the opening of the Central Stock Yards the terminal charge was $3.00 per care here in Louisville instead of $1.00 as now.

144. Well, did the L. & N. get the $3.00?

A. I don't know who got it.

145. Well, you say that the terminal charge here was $3.00 before the opening of the Central Stock Yards?

A. Yes, sir.

146. As against $1.00 now?

A. As against $1.00 now.

147. Well, why was that reduction made, say on stock coming in over the Illinois Central?

A. Because the Southern Railway agreed to deliver it from the Illinois Central to the Central Stock Yards for $1.00 per car, and the L. & N. met the reduction by making a $1.00 terminal charge from the Illinois Central to the Bourbon Yards.

148. The Southern Railway then was trying to get as much stock as it could to go to the Central Stock Yards?

A. The Southern Railway agreed to make a reasonable
644 switching charge to the Central Stock Yards, and it was considered that $1.00 per car was ample to compensate them for their service.

149. The Southern Railway then established the Central Stock Yards at its live stock depot in Louisville, and made a reduction on what had been the former terminal charges on stock coming in over the Illinois Central, for example, so as to induce that stock to go to the Central Stock Yards, the live stock depot of the Southern Railway, rather than to the Bourbon Stock Yards, the live stock depot of the Louisville & Nashville Railroad; that is true, isn't it?

A. The charge of $1.00 per car was made simply because it was sufficient for the service performed.

150. You don't know to whom that $3.00 terminal charge was paid, prior to the establishment of the Central Stock Yards, say on stock coming in over the Illinois Central?

A. No, not positively.

151. Well, you say "not positively"; do you know at all?

A. No, I don't know a distribution of the terminal service.

152. You said something a moment ago about the Louisville & Nashville Railroad reducing its terminal charges to meet the reduction by the Southern Railway; what was that you said on that subject?

A. I said the Louisville & Nashville met the dollar charge
645 on Illinois Central Stock.

153. Met it how?

A. By making a rate of $1.00 per car from the Illinois Central to the Bourbon Stock Yards.

154. Just as it is now, $1.00 per car from the Illinois terminal to the Central Stock Yards?

A. Yes, sir.

155. Has the Illinois Central Railroad Company any live stock depot in the City of Louisville?

A. No recognized live stock depot, they make deliveries where consignors direct.

156. There is no live stock depot in the City of Louisville on the line of the Illinois Central Railroad Company?

A. The Louisville Stock Yards—practically abandoned stock yards here—are accessible to the rails of the Illinois Central.

157. You don't mean that the Louisville Stock Yards are on the road of the Illinois Central Railroad, do you?

A. They are on the terminals of the Illinois Central.

158. You mean, on tracks belonging to the Illinois Central Railroad Company?

A. They are on tracks operated by the Illinois Central Railroad Company; I don't know whether they own those tracks, or not.

159. Now, as a matter of fact, it is true, as you stated a moment ago, that those Louisville Stock Yards are not really used as stock yards in the sense that the Central Stock Yards and Bourbon Stock Yards are used, are they?

A. No.

160. So there are no established stock yards—nothing that you would call a live stock depot on the line of the Illinois Central Railroad in Louisville?

A. No, sir.

161. Is there any live stock depot on the line of the Louisville, Henderson & St. Louis Railroad in Louisville?

A. The Louisville Stock Yards are on the terminals of the Louisville, Henderson & St. Louis.

162. That is this same abandoned stock yards that you mentioned moment ago, isn't it?

A. That is the Louisville Stock Yards.

163. That is the same one you were talking about a moment ago?

A. Yes, sir.

164. Now, is there any live stock depot on the line of Baltimore, Ohio & Southwestern Railroad in the City of Louisville?

A. The Central Stock Yards are the live stock depot of the Baltimore & Ohio.

165. By contract, I suppose?

A. By selection.

166. Will you produce and file a copy of the contract between the Baltimore, Ohio & Southwestern Railroad Company and the Central Stock Yards Company?

A. There is no contract; there was a circular issued at the opening of the Central Stock Yards, by the Baltimore, Ohio & Southwestern, advising their agents to send all enrouted business to the Central Stock Yards.

167. Will you produce and file a copy of that circular with your deposition?

A. I will, if I can find it.

168. Is there a contract between the Southern Railway and the

Baltimore, Ohio & Southwestern Railroad, for the use of the Central Stock Yards by the Baltimore, Ohio & Southwestern?

A. No, sir.

169. Now, going back to my original question, is there any live stock depot on the line of the Baltimore, Ohio & Southwestern Railroad in Louisville?

A. Not on their rails.

170. Central Stock Yards is not on their line?

A. No.

171. Is there any live stock depot on the line of the C. C. C. & St. L. Railroad Company in the City of Louisville?

A. No, sir.

648 172. Or on the Chesapeake & Ohio in the City of Louisville?

A. The Chesapeake & Ohio uses the L. & N. terminals, I think.

173. Well, the Chesapeake & Ohio really has no line of its own running into the City of Louisville, has it?

A. No, it has no rails, as I understand.

174. Then is it not true, Mr. Watkins, that with the exception of the Louisville Stock Yards, which, as you have said, are not used as a stock yards in the sense that the Bourbon Stock Yords and the Central Stock Yards are used, and which you have spoken of as an abandoned stock yards—I say, it is not true, that with the exception of the Louisville Stock Yards, there is no live stock depot either on the lines or terminals, or in the City of Louisville, either of the Illinois Central Railroad Company, or the Louisville, Henderson & St. Louis Railroad Company, or the P. C. C. & St. L. Railroad Company, or the Baltimore, Ohio & Southwestern Railroad Company, or the C. C. C. & St. L. Railroad Company, or the Chesapeake & Ohio Railroad Company, or the Chicago, Indianapolis & Louisville Railroad Company, ordinarily called the Monon?

A. We are the live stock depot for the Monon.

175. Who are?

A. The Central Stock Yards.

176. But the Central Stock Yards is not on the line of the Monon, is it?

649 A. No, it is not on the line of the Monon, it is on the line of the Southern.

177. Therefore it is true, is it not, with the exception of the old Louisville Stock Yards, there is no stock yards or live stock depot on the line of any of those roads that I have mentioned in the City of Louisville?

A. The Monon and B. O. & S. W. both have terminal agreements with the Southern Railway and the K. & I., and it is generally understood that in handling this terminal business the K. & I. handles their business down there on the Southern under that terminal agreement.

178. But the Central Stock Yards are on the line of the Southern Railway Company, are they not?

A. Yes, sir.

179. Therefore it is true, with the exception of the old Louisville

k Yards, there is no stock yards or live stock depot on the lines
ny of those roads that I have mentioned above, in the City of
isville?
. No, sir.
80. Therefore, none of those roads bringing live stock to the
of Louisville can carry such live stock to a depot on their own
s, and they are required to let their cars go to the depot on some
other company's lines, if they carry live stock at all?
A. Oh no, the Illinois Central could unload all of the stock
that they bring into Louisville at the Louisville Stock Yards
have it transferred to other cars; the Louisville Stock Yards have
le equipment for doing that kind of business, and have, in times
—and the Illinois Central have, in times past, been required to
ad all their competitive business at the Louisville Stock Yards,
drive their stock through the streets of Louisville up to the
rbon Stock Yards.
81. But as a matter of fact it is true, that the Louisville Stock
ds are not now equipped for the handling of live stock there, as
e stock depot, are they?
. They are equipped for handling—The Louisville Stock Yards
equipped for everything except the sale of live stock, and it is
recognized as a sales market, but so far as chutes, pens, and all
ities are concerned, they are well equipped to handle any kind
e stock that comes in, and are used right along for that purpose.
82. But nobody is operating the Louisville Stock Yards as a
lar stock yards, is there?
Yes, sir; they have a Superintendent at the Louisville Stock
ds who unloads and feeds stock, and handles it, a great deal of
ugh stock there.
83. That is, they handle and feed through stock that is passing
through the City of Louisville at that place?
A. Yes, sir; and re-load it.
184. But they do not unload and care for stock there, and
it for sale there, do they?
No, sir.
85. So that if the Illinois Central Railroad desires to bring live
to the City of Louisville to be sold in the City of Louisville, it
und to let that live stock go off of its tracks and to some live
depot not on its track, isn't it?
Not in the original car; if they wanted to transfer it, they
unload it at the Louisville Stock Yards, require the Louisville
shville to furnish them one of their empties, and load it up to
nt to the Bourbon Stock Yards.
86. But there is no live stock depot on the line of the Illinois
al Railroad at which it could unload live stock and have the
stock cared for and sold at that yard?
There is no regular market of that kind.
87. Nothing except the Louisville Stock Yards that you have
ioned?
Yes, which they use as a unloading point or depot.
88. On through stock?

A. And used to use it altogether on stock coming to Louisville from competitive points.

189. You said in answer to your counsel that a considera-
652 ble quantity of live stock sold at the Central Stock Yards went away again from the City of Louisville still in the shape of live stock; can you state what proportion of live stock sold at the Central Stock Yards goes again out of the City of Louisville as live stock?

A. We ship out about sixty or seventy-five per cent.

190. That is, about sixty or seventy-five per cent. of the live stock sold at the Central Stock Yards goes out again as live stock?

A. Yes, sir; you mean goes east out of Louisville?

191. Yes?

A. Yes, sir.

Redirect examination by Mr. DODD:

192. Mr. Watkins, you said that when the Southern Railway Company reduced the switching charge to $1.00, the Louisville & Nashville Railroad Company reduced its switching charge for stock coming over the I. C. and destined to the Bourbon Stock Yards to $1.00; is that correct?

A. Yes, sir.

193. Where does the Louisville & Nashville get the stock coming over the Illinois Central destined to the Bourbon Stock Yards, if you know?

A. On their connection with the Illinois Central, called the Dumesnil switch.

194. Isn't that at Fourteenth and Magnolia?

653 A. Yes, sir.

195. Is that closer or farther from the Bourbon Stock Yards than Seventh and Magnolia?

A. It is far*hter*.

196. Do you know why the Louisville & Nashville Railroad Company reduced its charges to $1.00 to the Illinois Central from the Dumesnil switch to the Bourbon Yards?

A. In order to meet the rate.

197. Was it of its own volition, or did anybody compel the Louisville & Nashville Railroad Company to do that?

A. The Bourbon Stock Yards, I suppose, compelled them to do that.

198. Mr. Watkins, if the Louisville & Nashville Railroad Company voluntarily, or at the dictation of the Bourbon Stock Yards, made its rate from Fourteenth and Magnolia to the Bourbon Yards $1.00, would you, as a railroad man, or Traffic Manager of a railroad company for years, say that $2.00 from Seventh and Magnolia was less than the cost of making the switching movement from that point to the Bourbon Stock Yards?

A. No, I would not.

199. Throughout the pleadings, Mr. Watkins, of the Louisville & Nashville Railroad Company in this case, they claim that the Louis-

ville & Nashville Railroad Company in performing the switching movement of live stock from Seventh and Magnolia to the Bourbon Stock Yards, does the same at less than it costs; what could have induced the Louisville & Nashville Railroad Company to have made the $1.00 switching charge of its own volition from Fourteenth and Ormsby to the Bourbon Stock Yards, when it got $2.00 from Seventh and Magnolia, and losing on that, unless it was in the interest of the Bourbon Stock Yards that they were doing it?

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A. It was in the interest of the Bourbon Stock Yards, of course.

200. Was such a charge as that from the Illinois Central prevailing before the construction of the Central Stock Yards?

A. No, sir.

201. What was that charge then?

A. $3.00 terminal charge.

202. Where is that connection; is it Fourteenth and Magnolia, or is it Fourteenth and Ormsby? Which place is it, if you know?

A. It is near Fourteenth and Ormsby.

203. Fourteenth and Ormsby would be farther than Fourteenth and Magnolia, would it not, from the Bourbon Stock Yards?

A. Much farther, about a half a mile, or nearly a mile.

204. Mr. Watkins, you said in answer to a question by Mr. Bruce, that the B. O. & S. W., and Chicago, Indianapolis & Louisville were enabled to use the depot of the Southern Railway Company, meaning by that, the live stock depot at the Central Stock Yards, because of their joint ownership of the terminals. What would be that character of movement, other than a switching movement for delivery purpose, where the stock originated on the Baltimore, Ohio & Southwestern, or Chicago, Indianapolis & Louisville, destined to the Central Stock Yards, and was handled by the terminal agency, K. & I., in Louisville for that purpose?

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A. It would be a joint terminal service.

205. Mr. Watkins, you said in answer to a question by Mr. Bruce that the Louisville & Nashville carried under special contract, live stock. I will ask you if that isn't a Bill-of-Lading for live stock, and in what respect that differs from the Bill-of Lading of the I. C. or the Southern—a live stock Bill-of-Lading?

A. A live stock contract on all roads are practically about the same, and differ from Bills-of-Lading on dead freight only as to the perishable nature and prompt handling.

206. Is there any difference as to the receipt and billing and transportation of live stock from dead freight by the other roads, as distinguished against live freight or live stock.

A. No, it is practically all billed the same and handled the same.

207. The same contract, except one is called a live stock contract and pertains to perishable freight, whereas the other may pertain to dead freight, with less stringent provisions respecting loss in its transit?

656

A. Yes, sir.

208. Are you familiar with the forms of live stock contracts made by the different railroads?

A. Yes, sir; I have seen a great many.

209. Well, the live stock contracts for shipment to the Louisville market, or the Central Stock Yards, I will ask you if any of them, so far as you have ever seen, mention, in their printed form, the Bourbon Stock Yards, or the Central Stock Yards, or any stock yards?

A. No, sir.

210. Except as they are directed and written out in a space left for that purpose in the blank form of bill-of-lading, and made accordingly as requested by the shipper?

A. Yes, sir.

Recross-examined by Mr. BRUCE:

211. The business done in Kentucky by the P. C. C. & St. L. R. Co., the C. C. C. & St. L. R. Co., the Chicago, Indianapolis & Louisville R. Co. (Monon), and the B. O. & S. W. R. Co., is exclusively interstate business, is it not?

A. Yes, sir.

The further taking of the testimony was adjourned until Saturday, February 7th, 1903, to 2 o'clock P. M.

657 SATURDAY, *February 7th*, 1903.

Met pursuant to adjournment.

J. W. MCCAMPBELL, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:—

1. Will you please state to the stenographer your name, age, residence and occupation?

A. J. W. McCampbell; I am 47 years old; residence 2424 Second Street, Louisville, Ky.; occupation, in the live stock business—live stock commission business.

2. Where are you engaged in the live stock commission business?

A. Central Stock Yards.

3. What is the present firm name?

A. McCampbell, Figg & Burnett.

4. Mr. McCampbell, as a member of the firm of McCampbell, Figg & Burnett, have you had any difficulty in getting stock over the Louisville & Nashville Railroad Company to the Central Stock Yards Company?

A. We have had a great deal of trouble.

5. What has been your trouble in that regard?

A. Well you want to know the Tennessee business?

6. Yes, all the trouble you have had respecting it?

A. The Kentucky stock, they will bill it to the Central
658 Stock Yards, but the Tennessee stock, they won't bill it to the Central Stock Yards, they will bill it to Louisville and send it to the Bourbon Stock Yards, and we have to have it reshipped back from the Bourbon Stock Yards.

7. Coming over what line, you mean they will bill it?

A. L. & N. Railroad Company.

8. Were you ever a member of the firm of Hart, McCampbell & Company?

A. Yes, sir.

9. What trouble did that firm have, of which you were a member?

A. Well, we had trouble ever since we have been there with the L. & N. Railroad Company, about deliveries.

10. Mr. McCampbell, what effect has that had on the business of the Central Stock Yards Company, and upon the business of the commission merchants—live stock commission merchants doing business at the Central Stock Yards; has it damaged them, or not?

A. It has damaged them very much.

11. Can you give any estimate of the extent of damage?

A. No, it is a hard thing to estimate.

12. Is there any reason for your believing that you would have received any live stock for sale that you did not receive if the Louisville & Nashville Railroad Company would have billed it to
659 the Central Stock Yards Company?

A. Yes, sir; I know of plenty of it—numbers of loads that wanted to come there which they refused to bill.

13. Well, what has been the result with respect to the Central Stock Yards as the handler of that stock, the feeder and carer thereof?

A. I have never had any trouble handling stuff that I had in my charge there, that had been consigned to me.

14. What effect has it had on the Central Stock Yards Company for the Louisville & Nashville Railroad Company to refuse to bill stock there?

A. It has damaged them very much.

15. What has been the trouble, Mr. McCampbell, with the business of the Central Stock Yards, other than the refusal of the Louisville & Nashville Railroad Company to bill stock there, if there has been any such other trouble?

A. There has never been any other trouble, as I know of, except that.

16. Mr. McCampbell, in the early stages of this action, there was a shipment of stock set forth in the petition by one J. J. Brown. I will ask you whether or not the firm, of which you were then a member, known as Hart, McCampbell & Company, sold that stock?

660 A. Yes, sir; I sold the stock.

17. I exhibit to you what purports to be the original bill-of-lading, and I will ask you if that is the original bill-of-lading for that live stock of J. J. Brown, consigned, as shown in that Bill-of-Lading, stating that that is the bill-of-lading filed with the affidavit in the case of J. J. Brown?

A. That looks like the Bill-of-Lading; the number of cattle is about all I know about it.

18. Do you know how that stock was shipped, other than is shown in the Bill-of-Lading?

A. Well, it went to the Bourbon, I think—I know it did, and brought back from there.

19. I will ask you to file that Bill-of-Lading and make it part of your deposition, as the defendant in this case denies that it had shipped the said stock to any person at the Central Stock Yards, or to any other place than Louisville.

The defendant objects to the statement by counsel to the witness as to the contents of the pleadings in the case.

A. Well now, I can't say that he shipped it to me at the Central Stock Yards, but I sold the stuff, it was turned over to me at the Central Stock Yards, and I sold the stuff, I know that; I don't know that it was ever shipped to me there, but it was billed to the Central Stock Yards.

661 20. Do you know that it was billed to the Central Stock Yards?

A. Yes, sir; I know it was billed to the Central Stock Yards, because Mr. Brown told me himself it was.

21. Did you see that Bill-of-Lading at the time?

A. Yes, sir.

22. I will ask you to file that bill-of-lading then as part of your deposition, marked "Exhibit McCampbell No. 1"?

A. I do so.

23. Mr. McCampbell, has the Central Stock Yards, as a stock yards plant, had facilities at its plant, consisting of unloading chutes, switches and yards, and commission merchants, sufficient to handle any business sent there, since the opening of the yards?

A. Yes, sir.

24. Have they such facilities now to handle any business sent there?

A. Yes, sir; facilities of that kind now, as good as any place has got.

25. I will ask you to state, Mr. Campbell, whether or not there are daily sales made at the Central Stock Yards now, and whether or not they have been made?

A. There are daily sales there, every day.

26. I will ask you to state, Mr. McCampbell, whether the butchers and packers located in the eastern portion of the City of Louisville have bought, and continue to buy, any live stock at the Cen-

662 tral Stock Yards for use at their respective butchering plants, or packing plants?

A. Yes, sir.

27. Are they buying any such stock there now?

A. Yes, sir; Pfaffinger and Bornwasser both buy there right now, they are both packers.

28. Where are their plants located?

A. Pfaffinger. I think, is on Market Street now, up near the Bourbon Stock Yards, and Bornwasser is down here, I don't know whether it is Franklin Street, or not; I know exactly where it is at, but I don't know what street it is on.

29. Is it in the eastern portion of the City of Louisville?

A. Yes, sir.

30. Where do Bornwaser and Pfaffinger & Bros. get their live stock for use in their respective plants?

A. Where do they get them?

31. Where are they delivered to them, I mean by that?

A. We ship to them at the Bourbon Stock Yards, by rail.

32. Mr. McCampbell, how long have you been in the live stock business?

A. Oh, twenty to twenty-five years.

33. Mr. McCampbell, with your experience in the live stock business for the time just mentioned, I will ask you to state if
663 there is any way practicable or feasible of getting live stock from the Central Stock Yards plant to the butchers and packers in the eastern portion of the City of Louisville who receive them at the Bourbon Stock Yards, in any other way than by shipment *of* rail from the Central Stock Yards to the Bourbon Yards?

A. There is no way without you drive them, and you could not very well drive the hogs—you would have to drive the cattle and stock through the city.

34. What effect would it have on hogs to have them driven?

A. Butcher hogs, it would have a great effect on them; you could not drive them at all, they would give down, they have to be shipped, there ain't nothing to that.

35. How about cattle?

A. Cattle could be driven, if it wasn't for the city; you take some chances driving them through the city.

36. What chances would you take driving them through the city?

A. Take chances of getting somebody crippled, damaged, things of that kind.

37. Would there be any shrinkage of the stock if it was driven through the streets from the Central Yards to the Bourbon Yards?

A. Certainly there would be—yes, sir.

38. If I understand you then, in addition to that, there would be a chance to injure pedestrians in passing through the
664 streets?

A. Yes, sir; in cattle there would be—there are a good many cattle drove through.

39. Mr. McCampbell, how long have you been engaged in the business at the Central Stock Yards?

A. For a year sometime about the first of November last.

40. Then you have been there since they opened up?

A. Yes, sir; I have been there since they opened up.

41. Do you know whether or not the Louisville & Nashville Railroad Company, the defendant in this action, received at points of connection of its track with the tracks of the Southern Railway Company, any live stock originating from other points on the Southern Railway than the Central Stock Yards, destined to the Bourbon Stock Yards, and delivered the same at the Bourbon Stock Yards?

A. It receives them every day from the Southern and the I. C. both, I know that.

42. How do you know that, Mr. McCampbell?

A. I see them switching them from one track to the other; I s them pass by our yard, and see the L. & N. have the same car nu ber and going up to the Bourbon with it in about three quarters an hour or an hour.

43. Mr. McCampbell, you have stated that you have been engag in the live stock commission business at the Central Sto

665 Yards since about the time of their opening. I will ask y to state whether or not your present firm, or the firm Hart, McCampbell & Company, of which you were a member, ev undertook to have the destination of the stock changed from t Bourbon Yards, or Louisville, Ky., to the Central Yards, when th reached South Louisville, and if you had any trouble in maki such change, state what your experiences were in that respect?

A. I undertook to get some changed there once, and failed, South Louisville; we have had so much trouble over there, I do know how I proceeded, that is all; I know they refused to chan them, at that time.

44. They did refuse to change the destination?

A. They refused to change the destination, and they went to the Bourbon.

45. Do you remember whether or not any tender of the freig was made to them?

A. Yes, sir; I made a tender of the freight myself.

46. Now, in making any tender of freight, I will ask you state to the stenographer whether you tendered the full Louisvi freight, or tendered the freight to South Louisville?

A. Tendered them all they asked me, whatever it was I w willing to pay it.

47. Did you express any inclination to surrender the Bill- Lading with the payment of the freight?

666 A. I don't remember whether there was anything s about that now, it has been so long.

48. Well, what was their conduct with respect to whatever y did?

A. Well, the agent over there just said that he could not do that was all.

49. Well, what became of that stock?

A. Well, it went to the Bourbon, and was re-loaded and brou back down to the Central.

50. Well, do you get any stock so consigned to Louisville, K and not to the Central Stock Yards, if you get it for sale at all at t Central Stock Yards?

A. Well, sir. it is billed to Louisville, and goes to the Bourb Stock Yards, and it is unloaded, and then it is handled there until t Southern people gives them a car, a Southern car—they won't bri it back in one of their own cars, have to give them a Southern c maybe that is a half a day or longer, and when they get a Southe car, they load it and bring it back to the Central Stock Yards in Southern car.

51. They won't use their own equipment to bring that live sto back?

A. No, sir; they won't use an L. & N. car nor any other car except a Southern car.

667 52. In the instance to which you referred, and in which you undertook to have the change made at South Louisville, in care of the Southern Railway Company to the Central Stock Yards, I will ask you to state whether or not you had the authority of the owner of the stock to make such change?

A. Yes, sir.

53. Mr. McCampbell, what effect does it have on live stock that is desired to be sold at the Central Stock Yards, by having it carried around to the Bourbon Yards, and the delay occasioned, of which you have spoken, of getting it back to the Central Yards; does it benefit that stock, or damage it?

A. Oh, it damages the stock—shrinkage, and you are more apt to have dead ones in it by re-loading and changing the cars.

54. Approximately, about how long does it take you to get from the Bourbon Yards to the Central Yards, live stock that was designed and intended for the Central Yards, but which were delivered at the Bourbon Yards; about how long, on an average, does it take you to get that stock back?

A. Well, on an average, I suppose eight or ten hours, it will average that.

55. What is done with that stock in the meantime?

A. Up in the chutes at the Bourbon Stock Yards.

668 56. I wish you would describe just what you mean by "chutes"; are they feeding pens, or what?

A. They are unloading pens, where you unload; they are put in those unloading pens and kept there until they get a Southern car, and if they get a Southern car in six or eight hours they bring it back.

57. Suppose they don't get a Southern car for twelve or fifteen hours?

A. Well, they will never bring stock back until they get it; if you never get a Southern car, you will never get your stock.

58. What do they do with the stock until they get a car?

A. They keep it right on the chutes, I know that because I went up there and seen them there myself.

59. What do they do for them?

A. Nothing, except keep them under lock.

60. Do they feed and water them?

A. No, sir; not unless you order it done.

61. What is the effect of having it fed and watered?

A. They have to do it then.

62. Well, who pays for it then?

A. The shipper of the stock pays for it.

63. What is necessary for live stock commission merchants at the Central Yards to do when they order the shipment from the Bourbon Yards of stock that has been unloaded there, that is

669 desired to be sold at the Central Yards; what do you have to do to get it back?

A. Well sir, I either have to go up there an- pay them the money

for the freight up there, they won't take anybody's check, your's nor anybody else's—have to pay them the money, and have to have it billed back just like a new billing altogether, from the Bourbon to the Central.

64. Do you mean to say that they won't take a check for the freight?

A. I mean to say that they won't take your check for the freight, you have got to get the money if it is Sunday night at twelve o'clock, or your stock will not be moved.

65. Well, were you ever in business at the Bourbon Yards before the Central Yards were opened?

A. Yes, sir; I was there for five years.

66. Well, what was their practice with respect to payment of freight then?

A. We paid it then every week.

67. Did they require money then, or would they take checks?

A. They would take checks then.

68. How is it with respect to your settlements for freight where you are?

A. We pay every week.

670 69. Well, will they take checks, or demand the money?

A. Oh yes, sir; they take our checks out there. I can go to the Bourbon and buy a load of cattle, and they will take my check for the load of cattle up there, but they won't take it for $30.00 for freight.

The further taking of the testimony was adjourned until Wednesday, February 11th, 1903, at 10 o'clock A. M.

671 WEDNESDAY, *February 11th*, 1903.

Met pursuant to adjournment.

CHARLES BYRNE, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:

1. Will you state your name, age, residence and occupation?

A. My name is Charles Byrne; live in the City of Louisville; my business is the live stock business; I am in my forty-fifth year.

2. Mr. Byrne, how long have you been in the live stock business?

A. Well, I have been in it since 1885 on my account, prior to that I was with my father.

3. How are you engaged in the live stock business, in what respect?

A. Well sir, I have been connected with Mr. S. W. Allerton, of Chicago, and also been an agent of Nelson Morris, and I am now agent of the Schwartschild, Shultzberger Company.

4. Have you any connection with any of the Railroad Companies as Live Stock Agent; if so, which road?

A. I am the live stock agent of the Pennsylvania Lines West of Pittsburgh.

5. How long have you represented that Railway Company
672 as its Live Stock Agent?

A. About twelve years, nearly.

6. Mr. Byrne, are you familiar with the facilities possessed by the Central Stock Yards Company at Central Stock Yards, Kentucky, for handling live stock of every kind?

A. Yes, sir.

7. What are its facilities; are they good or bad?

A. It is one of the most modern yards in the country to-day.

8. Have they track connecting with any railroad, and chutes suitable for loading and unloading live stock?

A. Yes, sir; they have about four thousand feet of their own siding, which connects with the switch of the Southern Railway at Floyd and G.

9 Have they chutes of modern construction?

A. Yes, sir; they have chutes, single and double deck chutes, twenty-five of them, for the native department, that is the native department of the cattle yards have eleven chutes for loading single and double deck cars, that is on the west side, the native cattle department; on the east side is the hog department, they have ten chutes for loading single and double deck cars; they also have a quarantine department of four chutes, and have about twenty pens; in other words, I have got a memorandum there which explains that.

673 10. I will ask you if you have prepared, at the request of counsel for the plaintiff, a statement showing the capacities of the yard, which is exhibited to you?

A. Yes, sir; I have.

11. I will ask you to file that and make it part of your deposition.

A. I do so, marked "Exhibit Charles Byrne No. 1."

12. Mr. Byrne, how long, within your personal knowledge has the defendant, the Louisville & Nashville Railroad Company, been handling live stock in the sense of receiving them for shipment and making deliveries thereof, in the Louisville market from all points on its lines?

A. Well, as long as I can remember; I have handled hundreds of cars of stock over their road, and this past summer I expect I have handled a hundred and fifty cars from all the distilleries on their branches, Bardstown Branch and the Knoxville Branch of their line, and shipped them over their road.

13. Mr. Byrne, has the Central Stock Yards, to your knowledge, had any difficulty in having deliveries made of live stock intended for sale at the Central Yards, reaching Louisville over the Louisville & Nashville Railroad?

A. Yes, sir; they have.

14. What has been its policy or conduct respecting the de-
674 livery of live stock at the Central Stock Yards, since the opening up of the said Central Yards?

A. Well sir, on the eve of the opening of the Central Stock Yards, they declined to bill any stock for the shippers, to the Central Stock

Yards; and in some instances, where the agents did bill stock to the Central Stock Yards, that stock was hauled to the Bourbon Stock Yards.

15. Mr. Byrne, what is necessary to get the stock to the Central Stock Yards, where the delivery is made against the wishes of the owners of the stock at the Bourbon Yards instead of the Central Yards?

A. Well, it forces the shipper to re-load his stock and bill it back to the Central Stock Yards again, which means a delay and expense to the shipper.

16. Mr. Byrne, what effect has that delay upon the stock, if any, with respect to shrinkage or loss of weight?

A. Well sir, it is a very serious thing to a shipper, because while the stock is being unloaded at the Bourbon Yards and being re-loaded, he is liable to have his stock more or less crippled or damaged in loading, and not only that, in handling them from one car to another, it means shrinkage—means more or less shrinkage to the stock, which is a loss of weight, which means money to the shipper.

675 17. Mr. Byrne, in your experience since 1885, acting for yourself in the live stock business, what has been the practice, if you know, of the Railroad Companies entering the City of Louisville, of permitting their cars to go to the Bourbon Yards, for unloading purposes; in other words, from what cars is the live stock unloaded, is it from the car in which they are originally loaded from the point of shipment, or is there any transfer made in Louisville for delivery at the Bourbon Yards?

A. There is no transfer; the car that is originally used for the shipment goes through to the yards, they don't unload it until it gets to the destination of the Yards.

18. Do you know why that is so?

A. How is that?

19. Do you know why that is true?

A. I know it is true.

20. Could live stock be safely loaded within three or four or five miles from the point of destination, would it be practicable?

A. Well, it is not practicable, for the reason that all railroads when they get a car load of stock, they load it up and run it to where it is billed to without a transfer.

21. What is the practice of all other roads entering the City of Louisville now with respect to billing stock, meaning by that, do they bill it according to the owner's wishes, or how?

676 A. All of the railroads outside of the Louisville & Nashville Railroad bill stock at the shipper's request, it goes where they request it to be sent to.

22. Do you know, of your own personal knowledge, whether live stock is now received from day to day, or during each week, at points on the Southern Railway Company, for instance, that is carried to the Bourbon Yards in the cars of the Southern Railway?

A. Yes, sir; I know of shipments made that way daily, almost daily, to the Bourbon Stock Yards.

23. Well, what is the policy of the I. C. and B. & O. and Pennsylvania?

A. The policy of the I. C. and the Louisville & Henderson Route, they deliver the stock where it is billed to, either the Bourbon or Central Stock Yards and also the Southern Railway.

24. Mr. Byrne, what effect on the business of the Central Stock Yards, and upon the business of the commission merchants at the Central Stock Yards, has been the course of conduct of the Louisville and Nashville Railroad in reference to making deliveries in the manner you have indicated at the Central Stock Yards?

A. Well, it is very disastrous and damaging, it has worked a hardship, not only on the yards, but the commission men there. The commission men are at a big expense in advertising their business and the markets &c., giving the markets to the shipper by wire and letter, which means an expense, and at the same time the
677 Yard Company has got their crews of men there under daily expense, not only day, but night, they have to keep a day crew and a night crew there, and by its being deprived of getting the business, it has accumulated a great big expense, and injured the Yard; and not only that, but the commission men——

25. Has that been great or small?

A. Oh, it is hard to tell how much they have been damaged.

26. Mr. Byrne, are you at the Central Stock Yards daily?

A. Well, pretty near daily; I am in and out of the city a good deal, through the state, going around from one place to another. My office, and my railroad office, is there, Central Stock Yards.

27. Mr. Byrne, does any of the stock sold at the Central Yards go to point east?

A. Yes, sir.

28. What is the policy of the Yards, and the Southern Railway Company, upon which line the Yards are located, with respect to permitting stock to go out from the Central Yards over the Louisville & Nashville Railroad to an eastern connection; by that, I will ask whether or not shipments are made from those yards over the Louisville & Nashville?

A. Yes, sir; shipments have been made out of the Central Stock Yards via L. & N., and Pennsylvania, and C. & O. and Penn-
678 sylvania Railroad to eastern points, Cincinnati and beyond.

29. What is the policy of the other railroads and the Central Yards, as compared to the policy of the L. & N., in being an open door policy, or an exclusive or preferential one; how is that, is there any distinction made at those yards?

A. Well, the Central Yards is located on the Southern Railway, and the Southern Railway handles all stock wherever the shipment is requested to go; in other words, it is billed out of the Central Yards, and it may go over the Pennsylvania, or the L. & N., or the B. O. & S. W., or the Monon; they treat all alike, make no distinction whatever.

30. Well, what is the policy of the road you represent, the Pennsylvania, in that regard?

A. The Pennsylvania Railroad will deliver wherever the shipper requests it to be delivered.

31. There is no road that declines to make delivery according to the instructions of the shipper, other than the L. & N., that enters the City of Louisville?

A. The Louisville & Nashville Railroad is the only railroad that takes the position to disregard the shipper's orders.

32. Mr. Byrne, do you know, of your own personal knowledge, whether sales are made daily at the Central Yards by the commission merchants there located?

679 A. Yes, sir; there is a market there for every car load of stock that comes in.

33. Have they facilities for handling the stock that comes in, I mean by that, commission merchants to dispose of it?

A. Yes, sir; they have commission men there, and not only that, they have speculators and order men there, right at the Yard ready to buy and sell stock, just the same as on any other market in the country.

34. I wish you would state whether or not any sales are being made, or have been made, to butchers and packers in the eastern portion of the City of Louisville at the Yards?

A. Yes, sir; Mr. Louis Bornwasser has been a buyer on the Central Yards for hogs, also Mr. William Pfaffinger & Company, and Mr. P. C. Kennert has been taking hogs out of there, and various butchers in the east end, wholesale and retail butchers.

35. Mr. Byrne, what means have the buyers in the eastern portion of the City of Louisville for getting the stock from the Central Stock Yards to their respective places of business?

A. Well sir, the stock is loaded in cars at the Central Stock Yards, and delivered at the Bourbon Stock Yards for Bornwasser, Pfaffinger and various butchers up in the east end.

36. Why are those deliveries made at the Bourbon Stock Yards instead of at the respective plants of these packers, if you

680 know?

A. Well Bornwasser and Pfaffinger haven't got any railroad connection, no railroad facilities at their *at their* packing plants.

37. Do you know what the rule of the Louisville & Nashville Railroad is for making delivery to any one in the eastern end of the city, other than the Bourbon Yards?

A. I have never known the L. & N. to make a delivery of live stock to Visman or the Louisville Packing Company.

38. They are delivered then to the Bourbon Yards, and the respective places where slaughtered?

A. Yes, sir.

39. Mr. Byrne, is it practicable to get the stock from the Central Yards to the purchasers thereof in the east end of the City of Louisville in any other way than by rail?

A. Well, if they could not get them by rail, they would be forced to drive them, and it is too far a drive for hogs from the Central Stock Yards to East Louisville to Butchertown, that must be a six or seven mile drive, and that would be more or less injurious to hogs.

Now, cattle, they could be driven, cattle can stand driving better than hogs.

40. Well, what is the result of driving cattle through the streets of the City of Louisville?

A. Well, it is a hazardous risk, they are liable to run upon the pavements, and run into people's yards, and damage lawns, and flowers, and there is liable to be a wild bullock in the drove, and it might hurt somebody, kill them.

41. Have you had any experience with respect to driving stock through the street, as to its being hazardous, dangerous, and people liable to get hurt and suffer?

A. It cost me about $6,000.00, that has been my experience, on one steer, broke a man's leg, and sued me for damages, and I was beat in the case, and the Court of Appeals affirmed the decision of the lower Court, and I had to settle.

42. Was that in an effort to drive a bullock through the streets?

A. Well, I could not say that that was an effort at all; this steer was taken out of a barn where I was feeding at Twenty-sixth and Broadway, at J. B. Wathen's distillery, and he got out on the public highway.

43. And injured this man?

A. Yes, sir.

44. Mr. Byrne, do you know what the switching charges of the Louisville & Nashville Company are for making delivery of a car from the I. C. to the Bourbon Yards?

A. It is $1.00 a car, at present.

45. When was it made $1.00 per car, and what was it just before such change?

A. The rates were reduced to $1.00 per car prior to the opening of the Central Stock Yards, some fifteen months ago.

46. At what point do they receive the live stock that may be destined to the Bourbon Yards, and reaching Louisville over the line of the Illinois Central Railroad?

A. The present delivery of the I. C. is made at what is known as the Hubb Track.

47. Hub Track?

A. Yes, sir; on Ormsby Avenue, which was formerly owned by Dumesnil. The L. & N. takes that stock from Fourteenth and Ormsby Avenue, and hauls it to the Bourbon Stock Yards for $1.00.

48. Mr. Byrne, is the distance greater or less from Fourteenth and Ormsby Avenue to the Bourbon Yards or from Seventh and Magnolia Streets to the Bourbon Yards?

A. Well, it is farther from Fourteenth and Ormsby than it is from Seventh and Magnolia Avenue.

49. Approximately, how much farther is it, if you can make an estimate?

A. Oh, I judge about a half a mile—about six squares.

50. Mr. Byrne, has any of the commission merchants, to your knowledge, that were at the Central Yards, changed their location, and if so, assigned any cause therefor by circular?

A. Yes, sir; the firm of Kirkpatrick Bros. & Company
683 moved from the Central Stock Yards on February 6th, last Friday, to the Bourbon Stock Yards.

51. Did they issue any circular?

A. Yes, sir; they did.

52. I exhibit to you a paper—what reasons were given for that change, in brief?

A. Well, they issued a circular giving their reasons, which I have in my hand, stating——

Counsel for the defendant objects to a statement of the contents of the circular.

53. File that circular and make it part of your deposition?

A. I do so, marked "Exhibit Charles Byrne No. 2."

54. Do you know, Mr. Byrne, whether the acts and conduct of the Louisville & Nashville Railroad Company in reference to making deliveries of live stock at the Central Stock Yards has had any effect at all on the commission merchants at the Central Stock Yards?

A. Yes, sir; not only Kirkpatrick & Company, but Stewart, Sanders & Miller left; one of their principal reasons, they said, was on account of the action of the Louisville & Nashville Railroad.

55. Mr. Byrne, does the Central Stock Yards get any live stock over the Louisville & Nashville Railroad other than Kentucky points, and under the order of injunction in this case?

684 A. They get stock from Tennessee off of their line, but it is hauled to the Bourbon Stock Yards, they will not bill it to the Central Stock Yards at the request of the shipper, they will only bill it to Louisville, Ky., and haul to the Bourbon Stock Yards.

56. Then that has to be re-shipped?

A. That comes under the form of a new shipment, and in order to get that stock back to the Central Stock Yards, the Southern Railway has to furnish cars to the Louisville & Nashville Railroad to load that stock up to get it back, which means a delay from six to eight hours in transit, and shrinkage to stock, and very often misses the market for the shipper.

57. What effect has that on the Tennessee shippers in making shipments?

A. Well, it deprives them from getting to the Central Stock Yards; parties that want to get to the Central Stock Yards, they don't want to have their stock hauled to another place, and have it unloaded and hammered around in chute pens, and liable to get crippled and shrinkage, and may be while in transit again they are liable to lose some of their stock—liable to do it while in transit.

58. Mr. Byrne, do you know, of your own knowledge, from observation whether or not deliveries are made quickly, and the unloading of the stock made promptly, and return of empties from the Central Stock Yards; what is the conduct of the business with
685 respect to making deliveries at the Central Yards with the facilities there for unloading and turning the empties back to the Railway Company for return to the connecting carrier?

A. I know that the Southern Railway is promptly returning all cars to foreign or connecting lines.

59. Well, what is the conduct of the Central Yards in its promptness of unloading the car after it reaches the yards?

A. Well, their crew is there to unload it, and just as soon as they unload it, the Southern engine pulls it back to the connecting line again, they don't unhook their engine at all.

60. Doesn't unhook the engine——

A. From the cars—no, sir.

61. To what point does it carry it back, do you know?

A. Well, to the L. & N., it is Seventh and Magnolia.

62. Mr. Byrne, do you know the usual charges made by the Stock Yards generally, and particularly the Central Stock Yards, for such services as they render to the owners of stock in yardage, feeding, and watering, and attention to stock; if you do know, I would ask you to state how the charges made by the Central Yards compare with the charges made at the Bourbon Yards?

A. Well sir, the charges at the Central Stock Yards is seventy cents a bushel for corn, it is a dollar at the Bourbon Yards; the Central Yards charges for hay a dollar a hundred, the Bour-
686 bon a dollar and a half; yardage on cattle at the Central is ten cents, Bourbon twenty cents; yardage on hogs is four cents at Central, and seven at the Bourbon; sheep three cents at the Central, and five cents at the Bourbon.

63. Who pays that yardage where the stock is handled at one yard or the other?

A. The shipper, the owner of the stock.

64. Mr. Byrne, do you know what the course of conduct has been of the Louisville & Nashville Railroad Company, where stock is billed on some other line than the Louisville & Nashville to a connecting point with the Louisville & Nashville Railroad, say at Nashville, and over the Nashville, Chattanooga and St. Louis Railway, consigned to commission merchants at the Central Yards, what, if anything, does the Louisville & Nashville Railroad Company do with respect to said billing, though made by another common carrier, before it reaches Louisville?

A. Well sir, I have two contracts in my hand of the Nashville, Chattanooga & St. Louis Railroad, which shipments were made on the 9th of this present month to the Central Stock Yards. The owners of the stock gave the agents instructions to bill the stock——

Counsel for the defendant objects to this testimony as to what the owners of stock instructed, because it is not possible that this witness could personally know it.

687 65. What do the Bills-of-Lading show on their face as to any erasure, if anything, if there was any erasure thereof?

A. It shows that "Central Stock Yards" has been scratched out.

Counsel for the defendant objects to the foregoing answer of the witness, unless the paper concerning which he speaks is filed.

66. I will ask you to file the two papers which you have before you—live stock contracts, and make them part of your deposition?

A. I do so, marked "Exhibits Charles Byrne Nos. 3 and 4."

67. Mr. Byrne, is there any considerable amount of business—live stock business, from Tennessee to the Kentucky market?

A. Yes, sir; there is. The receipts of the Louisville market from Tennessee, I guess, would run anywhere from fifty to sixty per cent.

68. Does the Central Stock Yards get from Tennessee, over the Louisville & Nashville Railroad, any live stock billed to the Central Yards, of which it makes delivery at the Central Yards direct, by turning the car over to the Southern at Seventh and Magnolia?

A. Not to my knowledge.

69. Mr. Byrne, where stock is billed from any point on the Southern Railway, whether competitive or non-competitive, under the direction of the owner, for delivery at Bourbon Yards,
688 where does the Southern turn over that car to the Louisville & Nashville Railroad Company for delivery thereof to be made as billed?

A. You mean, for the Bourbon Stock Yards?

70. Yes, sir?

A. Seventh and Magnolia.

71. Do you know, in your experience as a live stock representative of the Pennsylvania Railroad Company, and as a live stock man, whether the Louisville & Nashville Railroad Company will bill live stock to points on the Southern Railway, other than the Central Stock Yards and make delivery thereof to the Southern Railway for delivery to such points on its line, other than the Central Stock Yards?

A. Yes, sir; they billed stock off their line to Lawrenceburg, Kentucky to distilleries,—all those distilleries up there.

72. Have you known of that personally?

A. Oh yes, sir.

73. What station on the line of the Southern Railway Company, other than the Central Stock Yards, within your knowledge, if there is any, that the Louisville & Nashville Railroad Company will not bill stock to?

A. I don't know of any, only the Central Stock Yards.

Cross-examined by Mr. BRUCE:

74. You spoke of Vissman and the Louisville Packing Company, are they butchers and packers?

689 A. They are packers.

75. They are packers?

A. Yes, sir.

76. Do they do a lrage or a small business?

A. The Louisville Packing Company does the largest business, they kill from fifteen hundred to two thousand hogs daily, besides cattle.

77. Have they sidetrack conections with the line of the Louisville & Nashville Railroad?

A. Yes, sir; they have.

78. Are there any other butchers or packers in the city tha

have sidetrack connections with the line of the Louisville & Nashville Railroad?

A. Yes, sir.

79. Who are they?

A. Vissman & Company.

80. Well, I mean any others besides Vissman and the Louisville Packing Company?

A. That is all in the east end.

81. Well, are there any butchers or packers that have sidetrack connections with the Louisville & Nashville Railroad any place in the city besides Vissman and the Louisville Packing Com-
690 pany?

A. No, Bornwasser never put in a switch, he is down here on the river front, that is about Floyd Street, I mean.

691 S. A. STALCUP, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:

1. Mr. Stalcup, will you please state your name, age, residence and occupation?

A. S. A. Stalcup; age 32 years; Chief Train Dispatcher Southern Railway.

2. Mr. Stalcup, were you ever Trainmaster of the Southern Railway Company in Kentucky?

A. Yes, sir.

3. For what period of time?

A. From January 1st, 1900, until July 4th, 1902.

4. Since July 4th, 1902, ther-fore, you have been Chief Train Dispatcher, have you?

A. Yes, sir.

5. Who was your successor as Trainmaster of the Southern Railway in Kentucky?

A. None; the office was abolished by the reorganization.

6. The duties formerly performed by the Trainmaster, which was your occupation then, or your duties, are performed by whom now?

A. By the Superintendent and myself.

7. In the performance of your duties now, do you know anything of the movement of trains or cars over the lines and termi-
692 nals of the Southern Railway Company?

A. Yes, sir.

8. I wish you would state, Mr. Stalcup, whether or not the Southern Railway Company in Kentucky, at Louisville daily delivers to and receives from the Louisville & Nashville Railroad, an interchange of traffic at any point of physical connection between its tracks, or between its tracks and the tracks of the said Louisville & Nashville Railroad?

A. Yes, sir.

9. At what point is that interchange made, Mr. Stalcup?

A. At Seventh and Magnolia for freight equipment, and Fourth and G Street for passenger equipment.

10. To what extent, Mr. Stalcup, is freight traffic interchanged at the point indicated at Seventh and Magnolia Street connection?

A. I would say, several cars a day.

11. State whether or not all your freight traffic of interchange between the Louisville & Nashville Railroad Company is had at that point?

A. Yes, sir.

12. Mr. Stalcup, suppose live stock is received at some point on the line of the Southern Railway, destined to the Bourbon Stock Yards; what does the Southern Railway Company do with
693 that live stock when it reaches the City of Louisville?

A. Makes a delivery to the L. & N. Railroad at Seventh and Magnolia.

13. I wish you would explain what character of delivery it makes, whether it makes a delivery of the car containing the live stock, or the live stock is transferred to a car of the Louisville & Nashville?

A. We deliver the car to the Louisville & Nashville as the same car that the stock arrived at Louisville in.

14. From what car would that live stock, when delivered at the Bourbon Stock Yards, be delivered from?

A. In the same car in which it was loaded.

15. The Southern car then, if I understand you then, would be carried by the Louisville & Nashville from the point of connection at Seventh and Magnolia, to the Bourbon Stock Yards, and there unloaded?

A. Yes, sir.

16. If the stock is received at any point on the line of the Louisville & Nashville Railroad, destined to the Central Stock Yards, or to any person doing business at that place, at what point would the Southern Railway Company receive that stock for delivery?

A. From the L. & N. Railroad Company, at Seventh and Magnolia.

17. I wish you would state, Mr. Stalcup, whether facilities
694 are possessed by the Southern Railway Company for handling the interchange of live stock, and all traffic, at Seventh and Magnolia Streets, with the Louisville & Nashville Railroad Company?

A. Yes, sir.

18. Mr. Stalcup, I would like for you to state whether or not the Southern Railway Company has a right to operate its engines and crews on the connection between the two systems, the Southern Railway Company and Louisville & Nashville Railroad Company, at Seventh and Magnolia Streets?

A. Yes, sir.

19. What are the facilities of the Southern Railway Company at Seventh and Magnolia Streets for the receipt and handling of interchange traffic with the Louisville & Nashville Railroad Company?

A. There are two sidings, of a total capacity of about sixty cars

20. Are they sufficient for all business—freight, for interchange at that point?

A. Yes, sir.

21. I wish you would state, Mr. Stalcup, whether at that point there is any live stock interchanged or delivered by the Southern Railway Company to the Louisville & Nashville Railroad Company, where such stock is destined to the Bourbon Stock Yards?

695 A. Yes, sir.

22. Is that of daily occurrence, or not?

A. Practically so, it depends entirely upon when the shipments come in; all shipments, however, destined to the Louisville & Nashville Railroad Company, are delivered to them at that point.

23. Mr. Stalcup, what is the practice and rule of the Southern Railway Company with respect to receiving consignments destined to the Bourbon Stock Yards, meaning by that, will it receive consignments to the Bourbon Stock Yards, and make delivery to the L. & N. at Seventh and Magnolia for delivery at the Bourbon Stock Yards?

A. Yes, sir.

24. Is the course of conduct of the Southern Railway Company in that regard affected by whether or not it is from competitive points, or not?

A. No, sir.

25. Mr. Stalcup, suppose that from Shelbyville, which I believe is a competitive point between the lines of the Southern Railway Company and the Louisville & Nashville Railroad Company, a car load of stock should be consigned by the owner over the Southern Railway, and destined to the Bourbon Yards, would the Louisville & Nashville Railroad Company receive it at Seventh and Magnolia Streets and handle it?

A. Yes, sir.

696 26. From a competitive point?

A. Yes, sir.

27. Does the Louisville & Nashville Railroad Company make any distinction between competitive and non-competitive points?

A. Not now.

28. When did they cease to make that distinction?

A. I can't say how long back, but it has been several months, however.

29. Mr. Stalcup, are you familiar with the terminals of the Southern Railway Company, in Louisville?

A. Yes, sir.

30. About what distance, Mr. Stalcup, is the Seventh and Magnolia Street point of physical connection between the tracks of the Southern Railroad Company and the Louisville & Nashville Railroad Company, from the plant of the Central Stock Yards, at Central Stock Yards, Kentucky?

A. About one mile.

31. Mr. Stalcup, about what length of time ordinarily does it require a switching crew over the Southern Railway Company receiving live stock at Seventh and Magnolia Streets from the Louisville

& Nashville, and destined to the Central Stock Yards—would it quire to take that car to the Central Stock Yards and return t same to the said Seventh and Magnolia Street connection?

697 A. It would ordinarily take from one to two hours; in c of an emergency, it could be done in about thirty minutes.

32. Mr. Stalcup, what are your instructions from the chief off of the Southern Railway Company, if any, as to the method prompt handling of the cars of the Louisville & Nashville Railro Company containing live stock destined to the Central Stock Yar and for a prompt return of the empties to said point of connecti if you have any instructions in that regard?

A. The instructions are to give prompt handling of the cars.

33. What has been the character of the handling of that busin on the part of the parties having charge of the making of deliver from that point to the Central Stock Yards?

A. They give prompt movements.

34. I wish you would state whether or not the Southern Railw Company make any discrimination as to the point of destination any live stock shipped over its lines?

A. No, sir.

35. Mr. Stalcup, what is the conduct of the Southern Railw Company respecting the hauling of live stock destined to the Cent Yards that may reach Louisville over any other line than the Sou ern itself?

A. Give it prompt movement.

36. What is the course of conduct on the part of the Sou

698 ern Railway Company in the character of service it rend in taking traffic out of the Central Yards as well as taking into the yards?

A. Give it prompt movement.

37. Is there any discrimination on the part of the Southe Railway Company in taking it out of the Southern Yards, whet it comes over one road or the other, that may enter the City Louisville?

A. No, sir.

38. Have you any interchange of freight at the Seventh a Magnolia Street connections, received over the Louisville & Na ville Railroad Company to other points than the Central Stock Yar meaning by that, live stock freight, or does the Louisville & Na ville Railroad Company interchange life stock traffic at Seventh a Magnolia, where it is destined to any other point that the Cent Stock Yards?

A. It would, if it were destined via the Southern Railway.

39. Do they, destined to points on the Southern Railway, for stance, like Harrodsburg, and Lawrenceburg, make an interchan of it at Seventh and Magnolia?

A. Yes, sir.

40. Mr. Stalcup, do you know where the terminal properties the I. C. Railroad Company in Louisville are?

699 A. Yes, sir.

41. Suppose a car load of live stock originates in its sh

ment from a point on the I. C. Road destined to the Bourbon Stock Yards, at what point in Louisville would that live stock be turned over to the Louisville & Nashville for delivery at the Bourbon Yards?

A. There is a track out there, what they call the Hub Track, that is used jointly by the L. & N. and Southern Railway, to that point of the Illinois Central Yards, and I think that the Louisville & Nashville Railroad would get this stock right from the Illinois Central.

42. At this Hub Track?

A. On this Hub Track, or via this Hub Track.

43. Does the L. & N. run its engine down to that Hub Track for this stock?

A. I think they do.

44. I wish you would state whether that Hub Track is further or nearer than the Seventh and Magnolia Street connection to the Bourbon Stock Yards?

A. That would be, from the Illinois Central Yards?

45. Yes, sir; it is further or nearer than the Seventh and Magnolia Street connection to the Bourbon Yards?

A. The distance, I presume, is about the same.

46. What route would it take over the Louisville & Nash-
700 ville from this Hub Track or connection to go to the Bourbon Yards?

A. It would move over the Illinois Central via the Hub Track, I can't say just where it intersects the L. & N. main track, but it is in the vicinity, however, of Seventh and Magnolia, just where, I don't know, I confess; I have never been over the Hub Track any more than part of it that is used by our engines.

47. Where does the Southern Railway Company take its live stock traffic from the I. C., that is destined to the Central Yards?

A. We, as a rule, bring that down the Illinois Central main track to a Y connection that we have with their main track, and thence direct to the Central Stock Yards.

48. Where is the point that you receive that, what particular point?

A. We would receive that——

49. What street?

A. It would be about Fourteenth and Kentucky.

50. Mr. Stalcup, are you familiar with the operation of switch engines?

A. Yes, sir.

51. I wish you would state whether it is as convenient for a switch engine to push a car upon a siding as to pull it upon a siding?

A. From ordinary practice, it is much more easy to push it on than to pull it on.

52. By that, do I understand that they are pushed on more
701 frequently than pulled onto a siding?

A. Yes, sir.

53. How are they considered with respect to their movement backward or forward, is their power as great to move one way as the other?

A. Equally as great.

54. Have they lights upon each end when operating out in the yards?

A. Yes, sir.

55. They are double-headed, then are they?

A. Double lighted, headlight on either end.

56. Have they a running board on each end for operation?

A. Yes, sir.

57. Relatively, what percentage of the placement of cars is made by pushing, to that which is made by pulling the car in and upon a siding?

A. By a yard engine, the percentage would be about ninety-nine per cent.

58. In favor of what movement?

A. In favor of pushing the cars in on the siding.

59. Has there ever been, at any time, any refusal on the part of the Southern Railway Company to make delivery of live stock to the Louisville & Nashville Railroad Company, where it was destined to the Bourbon Stock Yards?

A. No, sir.

702 60. State whether or not the facilities of the Southern Railway Company in Kentucky, at Louisville, are adequate and sufficient for the prompt delivery of any or all live stock tendered to it and destined for the Central Stock Yards?

A. Yes, sir.

61. Where live stock is tendered to your road or company at Seventh and Magnolia, and destined to the Central Yards, and delivered to you by the Louisville & Nashville Railroad Company, at Seventh and Magnolia, what further duty does the Louisville & Nashville Railroad Company perform respecting delivery of such live stock?

A. After placing the car or delivering the car to the Southern Railway at Seventh and Magnolia, their responsibility ceases.

62. Could live stock at the Seventh and Magnolia Street point of connection between the Southern Railway Company and the Louisville and Nashville Railroad Company be transferred from one car to another, where the ultimate point of destination was at the Bourbon Yards or at the Central Stock Yards—be made without considerable delay, damage and injury to such live stock?

A. No, sir; no facilities whatever for transfer of live stock at Seventh and Magnolia.

63. Mr. Stalcup, to what classification does live stock belong in railroad parlance, as to whether it is perishable, or high class

703 freight, or dead freight?

A. Oh, it is treated as perishable freight—perishable freight of the highest class.

64. When so treated, what right of priority has it in the handling thereof, if any, in railroad operation?

A. It is given the preference over dead freight.

65. Mr. Stalcup, where live stock is shipped over the Louisville & Nashville Railroad from some point in Tennessee say, it is desired that the sale thereof shall be made at the Central Stock Yards, and

the same is carried by the Louisville & Nashville Railroad Company, upon reaching Louisville and the Bourbon Stock Yards, what requirements, if any, is made by the Louisville & Nashville Railroad Company as to the furnishing of cars for the re-handling and re-shipping of that stock from the Bourbon Stock Yards to the Central Yards, if you know?

A. They call upon us for empty cars to make the shipment from the Bourbon Yards to the Central Yards.

66. Did you ever know of any such requirements having been made, where the equipment in the receiving car was only used for the purpose of making delivery, until this demand by the Louisville & Nashville, where the stock is billed to a point, and the equipment is only necessary for delivery purposes?

A. No, sir.

704 67. Is there an interchange of dead freight between the Southern Railway Company in Kentucky and the Louisville & Nashville Railroad Company daily made at Seventh and Magnolia Streets?

A. Yes, sir.

68. Where such interchange is made, and the destination of the dead freight is at Louisville, or within the switching limits of Louisville, either upon the tracks of the one road or the other, is there ever made a transfer of such dead freight from the car of one company to the car of the other at this point of connection?

A. No, sir.

69. Are there any chutes or pens or facilities whatever for the transfer of live stock from one car to the other at the Seventh and Magnolia Street connection?

A. No, sir.

70. What facilities has the Southern Railway Company, meaning by that, trackage and chutes, connecting its line with the Central Stock Yards, for the handling of live stock destined to the Central Yards?

A. They have ample facilities to handle all stock that might be offered.

71. What is the character of the chutes at the Central Yards with respect to the safety of the loading and unloading of live stock?

A. Perfectly safe, I would judge.

705 72. What is the practice of railroad companies in their handling of freight destined to a point say like Louisville, Kentucky, or its vicinity, with respect to such freight after it reaches Louisville; does it pass through what is known as the break-up yards, or does it go direct to the point of destination upon a siding?

A. It is first taken into a break-up yards, and there switched into trains or cuts of cars for delivery to other lines or industries.

73. What is the custom of railroad companies with respect to the transfer and prompt delivery of the one to the other of perishable freight in its character, like fruit, vegetables, or live stock; how is that commonly and generally handled.

A. It is given a preferred movement, taken immediately from the

trains on their arrival, and handled by special engines or runs to the connecting line, or its destination.

74. What is the practice of the other railways entering the City of Louisville, other than the Louisville & Nashville Railroad Company, in making delivery of live stock in the cars in which it is received, where the same is destined to the Central Stock Yards?

A. They are permitted to go there in the same car.

Cross-examined by Mr. BRUCE:

75. When you say it is only a mile from Seventh and Magnolia — to the Central Stock Yards, do you mean air line distance,
706 or according to the way that an engine going from the Southern Railway would have to go between those two points?

A. A mile by the rails, that is, about a mile. Now, it may be a little greater, but if it is, it is a very little, or it may be less.

76. Have you ever been over that distance?

A. Yes, sir.

77. And you say it is about a mile.

A. Yes, sir; about a mile.

78. So that if it is over two miles, you are pretty badly mistaken?

A. Yes, sir.

79. Where is your office?

A. At Fourth and Main Streets, Columbia Building.

80. How long has it been there?

A. Possibly two years and a half or three years.

81. You hav-n't kept an office then at Seventh and Magnolia?

A. No, sir.

82. Then how do you know how long it has taken the Southern Railway in its business with the Louisville & Nashville Railroad, to take a car from the L. & N. at Seventh and Magnolia, carry it with its live stock around to the Central Stock Yards, and then return the empty car to the Louisville & Nashville at Seventh and Magnolia?

A. By reports rendered by the train crews handling such cars.

707 EDWIN FITZGERALD, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:

1. Mr. Fitzgerald, where do you reside, and what is your business?

A. I reside in Louisville, and I am Assistant General Freight Agent of the Southern Railway in Kentucky.

2. Major, is there any station on the line of the Southern Railway Company in Kentucky, and in Jefferson County, Kentucky known as "Central Stock Yards, Kentucky"?

A. Yes, sir.

3. About what distance, Major, is that station from the terminus of the Southern Railway Company in Louisville?

A. From our freight station, it is about nine miles.

4. Who is the agent, if you remember, of the Southern Railway Company in Kentucky at this station known as Central Stock Yards, Kentucky?

A. Mr. J. H. Ashcraft, Jr.

5. By whom was he appointed as Station Agent for the Southern Railway Company at that place?

A. He was appointed by a joint circular issued by Mr. Campbell, Assistant General Freight Agent of the St. Louis Division, and by myself, as Assistant General Freight Agent of the Louisville Division, October 31st, 1901.

708 6. By what is that circular known if it has a number?

A. It is known as "Circular No. D-3, October 31st, 1901."

7. Will you be kind enough, Major, to file a copy of that as a part of your deposition?

A. I do so, marked "Exhibit Fitzgerald No. 1."

8. Major, did Mr. Ashcraft ever qualify under his appointment as Agent for the Southern Railway Company at this Station known as Central Stock Yards, Kentucky?

A. Yes, sir.

9. Who is the agent now at this station, acting for the Southern Railway Company in Kentucky?

A. Mr. Ashcraft.

10. Major, I exhibit to you what purports to be "Rate Basis No. D-4," and "Division Basis No. D-5," and signed by yourself and Mr. Campbell, as Assistant General Freight Agent at St. Louis, Mo. I will ask you if that circular was ever issued by yourself and Mr. Campbell, and what it is?

A. The circular was issued by myself jointly with Mr. Campbell, and it is a basis for making and dividing rates to and from the Central Stock Yards, Ky., on Classes and Commodities. Totals. Apply Louisville, Ky., rates to and from all points on Southern Railway, St. Louis-Louisville Lines, also to and from all points on connecting lines where traffic is handled via Southern Railway, St.

709 Louis-Louisville Lines Junction Points, except Louisville, Ky.

On traffic originating at or destined to points on B. & O. S. W. Ry., C. I. & L. Ry., L. & N. R. R., I. C. R. R. and L. H. & St. L. Ry., delivered to or received from Southern Railway at Louisville, Ky., add one dollar ($1.00) per car to the Louisville rate.

Divisions.

Via Louisville, Ky., allow Southern Railw[illegible]n Kentucky, $1.00 per car.

Via other junctions allow Southern Railway,-St. Louis-Louisville Lines proportion of Louisville proper rates."

11. By whom was that circular signed?

A. Signed by myself as Assistant General Freight Agent, Louisville, Ky., and by R. A. Campbell, Assistant General Freight Agent, St. Louis, and becomes effective November 1st, 1901.

12. I will ask you to file that circular just read, and make it part of your deposition, marked "Exhibit Fitzgerald No. 2"?

A. I do so.

13. The circular just exhibited to you, and just made part of your

deposition, I would like to ask whether or not they were sent by the Southern Railway Company to all other connecting carriers entering the City of Louisville?

A. Yes, sir.

14. And including the Louisville & Nashville Railroad Company?

710 A. Yes, sir.

15. Major, will you please state whether or not that was the usual or customary way of advising connecting carriers of the opening or establishment of a new station upon its lines?

A. Yes, sir; it is.

16. Do you know whether that station is inside of or outside of the City of Louisville, and the limits thereof?

A. It is a very short distance outside of the City Limits of Louisville.

17. Major, in the operation under the circular just read by you, would there be any necessity, or in fact any joint tariffs on consignments from the Louisville & Nashville Railroad to the Central Stock Yards, Kentucky, between the said Louisville & Nashville Railroad Company and the Southern Railway Company?

A. None at all.

18. What portion of the rates or charges for transportation would the Louisville & Nashville Railroad Company obtain in billing under that circular, live stock destined to the Central Stock Yards; would it get its full Louisville rate, or have to, to any extent, divide the same with the Southern Railway Company?

A. It would get its full Louisville rate upon delivery to the Southern Railway Company at its point of intersection.

19. Operating under that circular, and operating as has been the operation under the order of injunction in this case, when a

711 car load of live stock, say originating from Bowling Green, Ky., and destined to the Central Stock Yards, and delivered to the Southern Railway Company upon reaching Louisville for delivery at the Central Stock Yards, who pays the Louisville & Nashville Railroad Company its freight to Louisville?

A. The Southern Railway.

20. What is then done with that car load of live stock?

A. It is forwarded by the Southern Railway—carried by the Southern Railway for delivery to the Central Stock Yards.

21. What is then done with respect to the charges on the said car, for all rates or charges on the part of the Southern, when it reaches the Central Stock Yards?

A. The Southern Railway pays to the Louisville & Nashville its charge upon the delivery of the property; the property is forwarded to the Central Stock Yards Station, and the agent at the Central Stock Yards Station collects from the consignee the amount of the charge up to Louisville—our agent accounts to the agent of the Central Stock Yards, the Central Stock Yards agent collects from the consignee the amount he is required to pay, being the charge up to Louisville, plus the switching charge from the junction of the Louisville & Nashville Railroad to Central Stock Yards.

22. What character of movement, Major, would that be in the shipment just indicated, on the part of the Southern Railway Company, after it received the same in Louisville for delivery at
712 the Central Stock Yards, meaning by that, would the same be a through billing or a switching movement?

A. In that case it would be a switching movement, it would be carried from the Louisville & Nashville Railroad to the Central Stock Yards, for which there is a charge established.

23. Is that charge, to any extent, made against the Louisville & Nashville Railroad Company?

A. Not at all.

24. Then Major, what effect could it have upon the Louisville & Nashville Railroad Company as to its revenue, whether the same was paid by the Southern Railway Company when delivered to it for delivery to the Central Stock Yards, or paid to the Louisville & Nashville Railroad Company if the Louisville & Nashville Railroad made the delivery at the Bourbon Yards?

A. Ther- would be no difference in the charge, they would get their full Louisville rate, there would be no difference in the revenue to the Louisville & Nashivlle Railroad, they would receive their full Louisville rate.

25. Major, you have been connected with the Southern Railway Company for a number of years, have you not?

A. Since its organization.

26. Major, is there any discrimination on the part of the Southern Railway Company in its billing and making delivery of live stock, or other freight, as to the point of destination—whether at the Bourbon Yards or Central Yards, of live stock coming to
713 this market?

A. None at all; the rates are the same to Louisville on the Southern Railway, whatever may be its delivery, so long as it is destined to Louisville.

27. Is there any difference on the Southern whether it comes from a competitive point or a non-competitive point?

A. No.

28. What has been the practice of the Louisville & Nashville Railroad Company with respect to handling cars of the Southern Railway Company, where they originate from a competitive point?

A. Until recently, some short time ago, the Louisville & Nashville would not receive any live stock traffic to be shipped to the Bourbon Yards coming over our line from a competitive point; they would receive from us to be delivered to the Bourbon Yards any traffic coming from a local station on our line; latterly, they have accepted all kinds of stock, without question.

29. Whether from competitive or non-competitive points, where destined to the Bourbon Stock Yards?

A. Yes, sir.

30. Did you ever have any circular to that effect showing that change of policy on the part of the Louisville & Nashville?

A. No.

31. You know nothing then, Major, of the cause of that
714 change of policy on the part of the Louisville & Nashville?

A. None whatever, I simply know that they accept it now without question; they have never issued, to my knowledge, any circular that has reached us, as to their willingness to do that.

32. Major, is there any interchange of traffic between the two railway systems, namely, the Southern Railway Company in Kentucky, and the Louisville & Nashville Railroad Company at Louisville, Ky.?

A. Yes, sir; there is a considerable interchange of traffic between the two systems at Louisville.

33. Major, what is the custom among railroads and particularly as between reputable and solvent railroad companies, as to the action of the one in making a delivery of a car load or loads of freight to the other for delivery purposes, without the prepayment of freight before making such delivery, if there is such custom?

A. That interchange of traffic is very freely made between all lines, the prepayment of freight isn't at all necessary; the settlements are made between the local agents without any necessity for delays.

34. Where there is such interchange by the delivery of one common carrier to the other, for delivery purposes, which one becomes responsible for the collection of the charges?

A. Well, if it is merely a switching charge service, the
715 company that brings the traffic into Louisville makes the collection from the consignee; if it is an interchange traffic, I mean to say, a continuous movement of traffic, then the delivering company will make that collection and settle and reimburse the road from whom they received the business.

35. Well, what is the custom of one reputable road with respect to the other of delivering without the pre-payment; do they do so, or exact pre-payment in all instances?

A. We do not exact pre-payment; reputable roads simply deliver the business for delivery, and the collection is made by the road where the switching charge service is rendered, doing the transportation service; its line ending at Louisville, the delivery made on the track of that delivering line, then the agent of the line bringing the business into Louisville collects from the consignee.

36. Major, referring back to this circular which you have read, was that ever intended as a basis for joint participation in a through freight rate to the Central Stock Yards?

A. No; it was wherever any line chose to adopt it as such; notice was simply given, that for a certain charge in addition to the rate to Louisville, or as they chose to make it, that would be the charge the Southern Railway Company would exact for the delivery of the car from its connection with such line to the Central Stock Yards; it would not necessarily involve any traffic arrangment, or the
716 issuance of tariff, unless they chose to do so.

37. Then, in the operation by connecting carriers entering the City of Louisville, as mentioned in that circular, who have billed live stock to the Central Stock Yards in care of the Southern Railway Company, the Southern Railway Company would not, to any extent,

as to any of the said connecting carriers, pro rate in the freight basis from the point of origin to the Central Stock Yards?

A. Not at all.

38. What would the Southern Railway Company get under that circular?

A. If it came over a foreign road?

39. Yes?

A. Delivered to us?

40. Yes?

A. For the Central Stock Yards, we would get the one dollar per car.

41. For what would that be paid?

A. For our switching service from their line, or for our transportation, whatever you choose to call it, over our line to the Central Stock Yards Station.

42. Major, does your road receive shipments of stock at its station, consigned to the Bourbon Stock Yards?

A. At what stations—any of its stations?

717 43. Any of its stations?

A. Yes, sir.

44. What does it do with such live stock so consigned?

A. Brings it to Louisville over its own line, and delivers it to the Louisville & Nashville Railroad at the point of interchange.

45. Well, what is that point?

A. Magnolia Avenue.

46. Seventh and Magnolia Streets?

A. Seventh and Magnolia.

47. Major, in that state of — case, in what car is that carried to the Bourbon Yards?

A. In the car that passes over our line bringing it into Louisville; that car, with its contents, is delivered to the Louisville & Nashville Railroad, and by them delivered to the Bourbon Stock Yards.

48. Does the Southern Railway Company, where live stock is received by it at its different stations on its line, require the Louisville & Nashville Railroad Company after such live stock reaches Louisville, that the same shall be unloaded and re-loaded into a Louisville & Nashville Railroad Company car, as a condition to the delivery at the Bourbon Yards?

A. No, sir.

718 49. Major, to what class does live stock belong in its classification in freight?

A. In the highest class, in the matter of movement a preferential class under all conditions.

50. By reference to preferential class, does that have any application to the speedy delivery of it?

A. Yes, I mean that; I mean in its movement and quick delivery, it has preference over any other traffic.

51. State whether or not it is regarded as perishable freight in its nature?

A. Yes, it is.

52. Major, where live stock reaches a point like the City of Louis-

ville, and has to be delivered to a point of destination on the lines of a connecting carrier, and within the switching limits from the point of interchange, is it practicable or feasible to have a transfer of such live stock from one car to the car of the delivering carrier?

A. Well, I should say it was not practicable, unless the facilities were established at such point of transfer; stock could not be easily transferred from one car to another, unless there were proper facilities, such as chutes &c., and they rarely exist at the point of interchange in a city like Louisville.

53. Would, or not, the close proximity of the ultimate
719 destination have any effect upon the property and feasibility of making interchange just before final delivery?

A. That was the reason why the facilities were not there, because the property is so near to the point of delivery, which has all the facilities, that it would be perfectly absurd to establish transfer facilities within the short distance of the ultimate delivery of the property, therefore they do not exist.

54. Major, is the Central Stock Yarks, as a plant, an exclusive delivery point of the Southern Railway Company?

A. No, sir.

55. Supposing I should apply to an agent at one of your stations, say Harrodsburg, and desire the consignment of live stock to the Bourbon Stock Yards, would your company receive it?

A. Without any hesitation.

56. Is there any discrimination at any station, competitive or non-competitive, on the part of your company against the wishes of the shipper as to the point of destination?

A. No, sir; none whatever.

57. Major, I exhibit to you what purports to be circular or written communication, issued by Mr. P. C. Powell, Assistant Freight Traffic Manager of the Southern Railway Company, and the Southern Railway Company in Kentucky, dated October 5th, 1901, and addressed to Mr. C. M. Goodwin, General Freight Agent, Louisville,
720 Ky., reading as follows:—

"DEAR SIR: Rate Adjustment: Rates on live stock to and from Central Stock Yards, Louisville, Ky.

I beg to advise that we have just been notified officially that the Central Stock Yards Company, whose yards at South Louisville have been selected as our live stock depot in Louisville, will be ready for business November 1st, 1901, and the first sales day will be Monday, November 4th, 1901.

The Southern Railway has arranged with the Central Stock Yards Company to perform switching between their yards and connecting points on other lines in Louisville, the tariff on stock to and from your line being as follows:

Between the L. & N. Railroad at Fourth Avenue and Central Stock Yards Company $1.00 per car.

Between the L. & N. Railroad at 7th and Magnolia and Central Stock Yards Company, $2.00 per car.

This charge covers cost of handling the loaded car in one direction and the return of the empty car in the reverse direction.

Please be advised that on and after November 1, 1901, we will receive from your line at either one of the above connecting points all live stock tendered us for delivery to the premises of the Central Stock Yards Company, and will be responsible for such delivery, and the collection of your charges on same in the usual way.

721 Will you please advise all interested to the above effect?

We will be glad to have you indicate in your live stock tariffs showing rates to and from Louisville, or by circular, that livestock may be handled to and from the Central Stock Yards Company in connection with the Southern Railway."

I will ask you, Major, if you are familiar with the contents of the communication just read, and know of its issuance by Mr. Powell?

A. This is a copy of a letter from Mr. Powell to Mr. Goodwin, a copy of which was furnished to me at the time that it was written; of coure, I did not write this letter, and I only know of it as a part of the correspondence of the office.

58. Were you advised at that time that such a communication had been written Mr. Goodwin?

A. I was furnished with a copy of that communication, and was advised.

59. Of it having been written by Mr. Powell?

A. Yes, sir.

60. By whom were you advised?

A. By Mr. Powell himself; by Mr. Powell sending to me a copy of his letter.

61. I will ask you to make this circular which is attached to Mr. Powell's affidavit in this case, a part of your deposition,

722 marked "Exhibit Fitzgerald No. 3," meaning thereby, the circular in the letter which you have just read?

A. I do so.

Cross-examined by Mr. BRUCE:

62. Major, do you wish to be understood as an officer of the Southern Railway, as saying that the Southern Railway recognizes the right of any shipper or connecting carrier to demand that the Southern Railway Company will deliver its cars to a connecting carrier at the will of the shipper or connecting carrier?

A. No, I don't mean to say that they would exact that; I don't mean to say that the Southern Railway Company could exact that; they could exact from any connecting line, upon the direction of a shipper, that they should receive the property, if I catch your idea.

63. What I mean to ask is this, do you mean to say that the Southern Railway recognizes the right of any shipper over the Southern Railway, or of any carrier connecting with the Southern Railway, to demand that the Southern Railway shall deliver its own cars to the connecting carrier?

A. We would do this, we can agree with the shipper to deliver our cars to a connecting line, if that connecting line will receive our

car, and we would obligate ourselves to the shipper to make delivery under such circumstances.

64. That is regulated then by agreement between you and the shipper?

723 A. If the necessity for such an agreement should arise, but it is understood that if we take from the shipper a character of freight that could not be transferred for delivery to a destination off of our line, we would take it with the understanding that the connection to whom that delivery would be made would accept it, but we have no right to demand at the request of a shipper, nor would we place ourselves under an obligation to a shipper to demand that the connecting line should receive our car.

65. Then the railroad companies do not recognize the right of connecting companies to demand that they shall receive the cars of the first company?

A. No, I think not, but there is an understanding between roads that that is done, and therefore I take it that that particular point has never occurred to me.

66. That is a matter, however, upon which the railroad managements exercise a discretion, is it not?

A. Yes, I should think it would be.

67. Now, you spoke of the Southern Railway accepting a car, or accepting freight from a shipper under an agreement to deliver the car containing that freight to a connecting carrier; do you mean that in any instance, that if any particular shipper desired to ship freight over your road, that you would recognize his right to demand that you should allow your cars containing that freight to go to the connecting line?

724 A. We would not recognize the demand of a shipper in that nature, but as such arrangements exist between lines, we feel ourselves at liberty to say to the shipper that this delivery will be made, it will be made by reason of the fact that it has always been made, but we would not place ourselves under the obligation to a shipper that a particular car should be delivered to a particular point, over which we have no control.

68. Well, do you recognize, so far as your own equipment is concerned, the right of a shipper, or any shipper, to demand that you shall give up your cars to a connecting carrier, and let the connecting carrier take it?

A. We do not, in the sense of a demand, in the sense of a right to a shipper.

69. That is what I mean?

A. We do not.

70. Is that not a matter, Major, upon which all railroad managements exercise a discretion, according to the facts and circumstances of the case?

A. Always—yes, sir.

Redirect examination by Mr. DODD:

71. Major, does not the character of transfer to the connecting carrier, and parting with the equipment when it is for delivery purposes only, make a difference from that state of case
725 where it is transferred and delivered to the connecting carrier for a considerable extended transit?

A. There is a decided difference—very decided difference.

72. Well, what would be the difference between the turning over to a connecting carrier for switching purposes and delivery purposes, from that turned over to a connecting carrier for an extended further transit of the car in the custody of the connecting carrier?

A. There would be no time that we would not be perfectly willing, under all circumstances, to deliver a car that is to be merely switched for delivery, whereas we would not—there are times when we would not permit a car to go off of our line for a long distance transit, but there is no time when we would not permit a car to go off of our line that was brought into the City of Louisville, to illustrate, merely to be delivered by reason of a switching service; the conditions are entirely different.

73. Major, isn't the course of conduct on the part of the Southern Railway Company of freely turning over to a connecting carrier its cars, where such turning over is for delivery purpose only, consonant with the prevailing custom and practice of interchange between two solvent railroad companies?

A. Universally so, with us.

Recross-examined by Mr. BRUCE:

74. Why do you say, "Between two solvent railroad com-
726 panies," Major?

A. Well, inasmuch as all railroad companies are now solvent, I do not suppose the word "solvent" need be used between the two railroad companies; I take it if there was an insolvent railroad company, that we know to be insolvent, we would be more guarded in the delivery of a car that involved a large amount of money, than we would to a company that we knew to be a solvent company.

75. After all, those conditions are simply elements that enter into the railroad company's exercise of its discretion in the matter?

A. Yes, in the matter of delivery.

76. Now Major, if a railroad company receives from the Southern Railway a car of the Southern Railway only for delivery purposes, yet when the second company gets control of that car, of course, it has the actual power to do with that car what it pleases, has it not, as much so as if it received it for the purpose of carrying the car to a distant point?

A. It would have the power, because of possession, but it would not have the power under the comity that occurs and exists between railroads; in other words, if we delivered to the Illinois Central a car merely to be switched—we deliver to the Louisville & Nashville, a better illustration, a very large quantity of grain for Ballard & Ballard mills, coming over our line; that car goes actually out of

our possession, it goes into the possession of the Louisville &
727 Nashville Railroad; it is expected, and it is done, as far as in the power of that company to do it, to return that car to us as expeditiously as possible after it has been unloaded. It is quite possible that the point that you make may occur, the abuse of cars, it has occurred, but it is not an abuse that is either recognized or would be tolerated by any management, of which I have knowledge.

728 It is agreed by and between the parties hereto that the deposition of B. S. JOSSELYN taken on the hearing before the Interstate Commerce Commission may be read as his deposition herein to the same extent as if taken in this action, which said deposition reads as follows:

Mr. DODD: Mr. Josselyn: What is your business, and place of business and residence?

Mr. JOSSELYN: Manager of the Kentucky and Indiana Bridge and Railroad Company at Louisville, Ky.

Mr. DODD: I will ask you to state whether or not there is any connection—physical connection—between the tracks of the Louisville & Nashville Railroad Company and those of the Southern Railway Company in Kentucky at or near 7th and Magnolia Avenue, and if so, what you know about that connection?

Mr. JOSSELYN: There is a physical track connection between the Southern Railway, the K. & I. and the Louisville & Nashville. I might state to make myself clear on that point that the K. & I. Bridge and Railroad Company is owned by the Southern Railroad Co., the Chicago, Indianapolis & Louisville and the Baltimore & Ohio Southwestern Railroad Company in equal parts and that that connection at 7th and Magnolia is a physical connection between the three lines mentioned and the Louisville & Nashville as well as the K. & I.

Mr. DODD: Do you know how that track was originally
729 constructed and by whom? Do you know what ownership there was in the cons-ructors thereof?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: State how that was?

Mr. JOSSELYN: There is a main track running from what is called the L. S. Junction, or 12th and Magnolia, eastwardly to 7th and Magnolia, in Magnolia Street to the connection with the L. & N. That was constructed by the Southwestern Construction Company for and in behalf of the Kentucky & Indiana Bridge Company and the Louisville Southern Railway Company, now the Southern Railway, and that *on* or about the same time the Louisville Southern Railway, now the Southern Railway, constructed a second track in that street, which was, and is supposed to be the property of the Southern Railway Company at this date, but for convenience of operation the two lines are considered one—the main track of the K. & I. and the second track of the Southern Railway.

Mr. DODD: What relationship in the ownership of that did the old K. & I. Bridge Company bear to what was then the Louisville Southern Railway Company and now the Southern Railway Com-

pany in Kentucky—what portion owned by the Louisville Southern, now the Southern Railway Company, and what portion owned by the K. & I. Bridge Company?

Mr. JOSSELYN: The south track in Magnolia Street was owned by the Louisville Southern and is owned by the Southern Railway today. The north track is owned by the K. & I. Bridge Company.

Mr. DODD: Do the engines of the Southern Railway Com-
730 pany operate those tracks?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: The engines and crews of the Southern Railway have a right to operate over them?

Mr. JOSSELYN: Yes, sir; they have a right to put their engines in there at any time.

Mr. DODD: I will ask you to state whether there is at that point any interchange of traffic between the two railway systems—the Louisville & Nashville and the Southern Railway Company?

Mr. JOSSELYN: Yes, sir; daily.

Mr. DODD: What is the capacity at that point of connection for the interchange of traffic between the two systems?

Mr. JOSSELYN: The tracks will hold probably 60 to 75 cars. We interchange an average of 50 to 75 cars a day there, and we have interchanged as high as 200 cars through that point.

Mr. DODD: Do you interchange dead freight and live freight both there?

Mr. JOSSELYN: Yes, sir; everything but passenger equipment.

Mr. DODD: Everything but passenger equipment is interchanged largely at that connection?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: Has the Southern Railway Company facilities and capacity for taking from the Louisville & Nashville Railroad
731 Company at that point any and all live stock that may be tendered for delivery at the Central Stock Yards station?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: Have they been receiving it there to the extent delivered by the Louisville & Nashville and making delivery thereof?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: I will ask you to state whether or not they have been making any delivery of what is known as interstate traffic at that point for the Central Stock Yards?

Mr. JOSSELYN: I am not qualified to answer that question, because I do not see the billing.

Mr. DODD: You do not know the billing?

Mr. JOSSELYN: No, sir.

Mr. DODD: Does the Southern Railway Company in Kentucky at that point make delivery of live stock to the Louisville & Nashville for delivery by the Louisville & Nashville Railroad Company to the Bourbon Stock Yards?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: Does the Louisville & Nashville Railroad Company deliver at that point live stock to the Southern Railway if consigned

to some other point non-competitive than the Central Stock Yards, such as Lawrenceburg and distilleries on that line of railway?

Mr. JOSSELYN: Yes, sir; that is my understanding, although I am not personally familiar with the billing.

732 Mr. DODD: Do you know that, independent of the billing, that live stock is interchanged there?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: And going to some point on the Southern?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: Mr. Josselyn; do you know whether or not there are any facilities for switching from the Southern Railway Company into the yards of the Central Stock Yards Company?

Mr. JOSSELYN: Yes, sir. We are running our engines in there daily.

Mr. DODD: What line of the Southern is this that passes the Central Stock Yards going southward? To what point does that reach? In other words, is it the main line or a branch?

Mr. JOSSELYN: It is the main line of the Southern Railway, south and east; called the Louisville Division of the Southern Railway.

Mr. DODD: Mr. Josselyn, do you know the first station out of the City of Louisville on the line of the Southern Railway?

Mr. JOSSELYN: I could not answer that question without consulting a map or without consulting a time-table—unless it would be considered that the Central Stock Yards was the first station. I know there is a station at that point, and I would suppose that would be the first station.

733 Mr. DODD: Do you observe the handling of freight at that point of connection between the two systems in the use of switch engines for that purpose?

Mr. JOSSELYN: At what point of connection?

Mr. DODD: Seventh and Magnolia Streets.

Mr. JOSSELYN: Yes, sir.

Mr. DODD: Is it unusual or usual for a switch engine to push upon a siding freight of any kind with the freight in front of the switch engine?

Mr. JOSSELYN: Yes, sir; it is done every day there.

Mr. DODD: Is that unusual?

Mr. JOSSELYN: No, sir; it is common practice at that point.

Mr. DODD: How is a switch engine constructed with respect to its facilities for pushing a car or pulling a car?

Mr. JOSSELYN: Both ends are considered the same.

Mr. DODD: They have no cow-catcher on them?

Mr. JOSSELYN: No, sir.

Mr. DODD: Have they a running board on each end?

Mr. JOSSELYN: Yes, sir.

Mr. DODD: In the operation of the switch engine in yards, what percentage relatively of cars are placed upon sidings of any kind by being pushed on such sidings with reference to the placing of cars by being pulled onto such sidings by switch engines? How are

734 the larger number placed, relatively?

Mr. JOSSELYN: Well, cars are very seldom pulled into a sid-

ing. In other words, they would be pushed into a siding. They can be pushed into a siding whether the engine is turned one way or the other.

Mr. DODD: That is because of the fact that they are constructed to run either way with power applied to cars?

Mr. JOSSELYN: It is very seldom that an engine will pull cars into a siding. They are ordinarily pushed in.

Mr. DODD: In that case would the car be in front of the engine or behind the engine?

Mr. JOSSELYN: They would be in front of the engine in pushing them in.

Mr. DODD: You may take the witness.

Cross-examination:

Mr. BRUCE: Mr. Josselyn; there has been a temporary injunction in effect for some months passed, issued by the Jefferson Circuit Court, requiring the Louisville & Nashville Railroad Company and the Southern Railway Company to interchange live stock at Seventh and Magnolia, has there not?

Mr. JOSSELYN: That has been my understanding from the
735 reading of the papers.

Mr. BRUCE: What is your present occupation?

Mr. JOSSELYN: I am Manager of the Kentucky & Indiana Bridge and Railway Company.

Mr. BRUCE: That is a corporation, is it?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: That is the corporation which owns the structure known as the Kentucky & Indiana Bridge and which owns this railway track that runs down Magnolia Avenue and connects with the Louisville & Nashville tracks at Seventh and Magnolia, is it not?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: The Southern Railway simply owns a side-track at that connection, does it not?

Mr. JOSSELYN: In its own name proper, but it has a third interest in our property.

Mr. BRUCE: It does not own any interest in the property of the Kentucky & Indiana Bridge and Railway Company, does it?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: How?

Mr. JOSSELYN: It owns a third interest in it.

Mr. BRUCE: How does it own a third?

Mr. JOSSELYN: By purchase.

Mr. BRUCE: Of the property or the stock in that corporation?

Mr. JOSSELYN: In the stock and bonds.

736 Mr. BRUCE: In the Kentucky & Indiana Bridge & Railway Company?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: But when you speak of the Southern Railway owning an interest in that track, that main track on Magnolia Avenue, you simply mean by that that the Southern Railway owns a third interest in the stock or owns one-third of the stock of the Kentucky &

Indiana Bridge & Railway Company and that the Kentucky & Indiana Bridge & Railway Company is the owner of the main track? That is what you mean, is it not?

Mr. JOSSELYN: I mean that track as owned is for the personal benefit of the Southern Railway, if they care to exercise that privilege. They have the right to put their own engines in there and make the interchange of their business without any compensation whatever to the K. & I. Bridge & Railway Company.

Mr. BRUCE: That track, as I understand you now, is owned by a corporation known as the Kentucky & Indiana Bridge & Railway Company?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: That is true, is it not?

Mr. JOSSELYN: Yes, sir.

Mr. BRUCE: And the Southern Railway owns no interest in that track except in this sense, to-wit; that the Southern Railway
737 is the owner of one-third of the stock and bonds of the Kentucky & Indiana Bridge & Railway Company? Is that true?

Mr. JOSSELYN: They have no interest that might be considered an exclusive interest; no, sir.

Mr. BRUCE: Is not their interest, Mr. Josselyn, simply and only such as I have stated to you?

Mr. JOSSELYN: No, sir; not exactly, for this reason: The Kentucky & Indiana Bridge & Railway Company is the terminal property of the three lines mentioned, including the Southern Railway.

Mr. BRUCE: Let us come back to the question again—whether you do not mean simply this: That the Kentucky & Indiana Bridge and the tracks connecting with the Kentucky & Indiana Bridge, including this track in Magnolia Avenue is, or are, owned by the corporation known as the Kentucky & Indiana Bridge & Railway Company, and that the stock and bonds of that corporation are owned equally, one third each, by the three corporations, railroad companies, which you have named? Is that all you mean?

Mr. JOSSELYN: That is all I mean so far as the ownership is concerned.

Mr. BRUCE: That is all I asked.

Mr. JOSSELYN: That is, this one track.

Mr. BRUCE: That is the track I am speaking of.

Mr. BRUCE: That is all.

738 Redirect examination:

1. Mr. DODD: Mr. Josselyn, in order that we may understand, I will ask you if it is not true that the Seventh and Magnolia Street physical connection is jointly operated for the use and benefit of the Southern Railroad Company of Kentucky and the other two roads you have mentioned, with express right and privilege on the part of any or all of them of having use of all those tracks? Is it not true that they operate it upon a pro rata expense basis by the three roads named?

Mr. JOSSELYN: Yes, sir.

2. Mr. DODD: Do you know whether or not the Southern Rail-

way in Kentucky acquired all of the property of the Louisville Southern Railway Company?

Mr. JOSSELYN: That is my understanding.

3. Mr. MCCHORD: The K. & I. Bridge & Railway Company was originally owned by the K. & I. Bridge corporation? Is that true?

Mr. JOSSELYN: The old K. & I. Bridge Company?

4. Mr. MCCHORD: Yes, sir.

Mr. JOSSELYN: Yes, sir.

5. Mr. MCCHORD: Is it not true that there was a reorganization of that company, and a new charter obtained, which is known as the Kentucky & Indiana & Railway Company?

739 Mr. JOSSELYN: Yes, sir.

6. Mr. MCCHORD: And the property is now held by that corporation?

Mr. JOSSELYN: Yes, sir.

7. Mr. MCCHORD: Is it not true that the reorganization was made under the agreement of the three roads mentioned that they should have the use of the property and each road pay its pro rata portion of the expenses—each to have the use of the K. & I. property?

Mr. JOSSELYN: Yes, sir.

8. Mr. MCCHORD: And they held under the reorganization the use of that property?

Mr. JOSSELYN: Yes, sir.

9. Mr. BRUCE: Have you seen that agreement?

Mr. JOSSELYN: Yes, sir. I was put in charge of the property after the reorganization, after it was taken out of the receiver's hands.

10. Mr. BRUCE: That agreement was something that antedated the reorganization of the Kentucky & Indiana Bridge Company?

Mr. JOSSELYN: I do not understand.

11. Mr. BRUCE: I mean entered into before.

Mr. JOSSELYN: The agreement was entered into before the purchase of the property.

740 12. Mr. BRUCE: When it was still the property of the K. & I. Bridge Company?

Mr. JOSSELYN: When still in the hands of the receivers.

13. Mr. BRUCE: And subsequently it was sold and bought by the Kentucky & Indiana Bridge & Railway Company?

Mr. JOSSELYN: Yes, sir.

14. Mr. BRUCE: That is all.

Mr. DODD: Is that property still being operated under the contract you mentioned?

Mr. JOSSELYN: Yes, sir; it is being operated under the contract dated January 26, 1900.

Mr. DODD: That is all.

Witness excused.

It is agreed by and between the parties hereto that certain parts of an affidavit of T. C. Powell heretofore made and filed in the United States Court for the Western District of Kentucky may be read in his deposition in the case at bar, subject to exceptions as to

competency and relevancy of the subject matter, which parts of said affidavit are as follows, towit:

The affiant, T. C. Powell, says that he is Assistant Freight Traffic Manager of the Southern Railway Company, and the South-
741 ern Railway Company in Ky.; that on October 5th, 1901, he as assistant Freight Traffic Manager of said Railway notified by letter Mr. D. M. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad Company at Louisville, Kentucky as follows:

"OCTOBER 5TH, 1901.

7753 A.

Mr. D. M. Goodwin, General Freight Agent, Louisville, Ky.

DEAR SIR: Rate adjustment: Rates on live stock to and from Central Stock Yards, Louisville Ky.

I beg to advise that we have just been notified officially that the Central Stock Yards Company, whose yards at South Louisville have been selected as our live stock depot in Louisville, will be ready for business November 1st, 1901, and the first sales day will be Monday, November 4th, 1901.

The Southern Railway has arranged with the Central Stock Yards Company to perform switching between their yards and connecting points on other lines in Louisville, the tariff on stock to and from your line being as follows:

Between the L. & N. Railroad at Fourth Avenue and Central Stock Yards Company $1.00 per car.

Between the L. & N. Railroad at 7th and Magnolia and Central Stock Yards Company, $2.00 per car.

This charge covers cost of handling the loaded car in one direction and the return of the empty car in the reverse direction.

Please be advised that on and after November 1, 1901, we
742 will receive from your line at either one of the above connecting points all live stock tendered us for delivery to the premises of the Central Stock Yards Company, and will be responsible for such delivery, and the collection of your charges on same in the usual way.

Will you please advise all interested to the above effect?

We will be glad to have you indicate in your live stock tariffs showing rates to and from Louisville, or by circular, that live stock may be handled to and from the Central Stock Yards Company in connection with the Southern Railway."

Similar notices dated October 5th were sent to the Freight Traffic officers of the other lines connecting with the Southern Railway Company in Louisville.

Affiant further states that he has since been advised that the Central Stock Yards Company is located at a point on the lines of the Southern Railway Company in Kentucky in Jefferson County, and not in the City of Louisville.

Affiant further says that he authorized the publication of Circular D 3 dated October 31, signed jointly by Edward Fitzgerald, Assist-

ant Freight Agent, Louisville Division, and R. A. Campbell, Assistant Freight Agent, St. Louis Division.

He further states that subsequent to his notice of October 5th, in regard to the switching to be performed to the Central Stock Yards Co.'s plant, acknowledgements were received from the following:

743 J. B. Hill, General Freight Agent, P. C. C. & St. L. under date of October 11th; F. M. Whitaker, Freight Traffic Manager, Chesapeake & Ohio, under date of October 9th; E. F. Cost, Freight Traffic Manager, Cleveland, Cincinnati, Chicago & St. Louis Railway Company; F. B. Bowes, General Freight Agent, Illinois Central Railroad Company, and in the course of correspondence communications in regard to the establishment of rates on live stock based on said notice of October 5th were received from C. H. Rockwell, Traffic Manager, Chicago, Indianapolis & St. Louis Railway Company; L. J. Irwin, General Freight Agent, Louisville, Henderson & St. Louis Railway Company; S. T. McLaughlin, General Freight Agent of the B. O. & S. W.; but no response was received from the Louisville and Nashville Railway Company.

Affiant further states that under date of October 31st, he received and acknowledged a letter dated October 31, 1901, signed D. M. Goodwyn, General Freight Agent reading as follows:

"LOUISVILLE, KENTUCKY, *October* 31, 1901.

Mr. T. C. Powell, A. F. T. M., Southern Ky., Louisville, Ky.

DEAR SIR: Delivery of live stock at Louisville. I beg to hand you herewith copy of our circular N. S. 1154 of October 16th, with respect to the issuance of live stock contracts covering specific delivery within the City of Louisville and shall be glad to have you give your agent and representative such instruction as may be necessary to

744 have this circular complied with. Kindly acknowledge receipt of this circular by bearer and advise if you will comply with our request:

Said Circular is as follows:

"Louisville & Nashville R. R. Co.

Office of the General Freight Agent.

Circular N. S. No. 1154.

(Cancels Circular No. N. S. 956 of 10/11/1900.)

LOUISVILLE, KENTUCKY, *October* 17*th*, 1901.

Delivery of Live Stock at Louisville, Ky.

To Agents and Connections:

In accepting shipment of live stock destined to Louisville, Kentucky, via this company's lines Agents and connections must exercise particular care and see that no agreement appear in the contract to make delivery on any specific switch or siding in the City of Louisville.

Shipment may, however, be consigned (as heretofore) to the ca
of firms or individuals at Louisville, Ky., but no contracts callin
for delivery at any special switch or siding must be made or issue
(Signed) D. M. GOODWYN,
745 *General Freight Agent.*"

Affiant further says that on October 26th, 1901, he received an
acknowledged the following letter dated October 26th, 1901, signe
by Mr. Oscar Fenley, President of the Bourbon Stock Yards Com
pany:

"LOUISVILLE, *October 25th,* 1901.

T. C. Powell, Esq., Ass't Freight Traffic Manager, Southern Railwa
Co., Louisville, Ky.

DEAR SIR: An arrangement has been effected by which the Loui
ville & Nashville Railroad Company will receive live stock at 14t
and Ormsby Avenue, and transfer it over the Dumesnil switch to th
Bourbon Stock Yards, to be moved for $1.00 per car.

I am advised that your company can, if it choose, avail itself o
the decreased rate and the improved service by delivering at Ormsb
Avenue connection."

Affiant further says that on October 26th, 1901, he addressed th
following communication to Mr. D. M. Goodwyn, General Freigh
Agent of the Louisville & Nashville Railroad Company, Louisvill
Ky.:

"OCTOBER, 26TH, 1901.

Mr. D. M. Goodwyn, G. F. A., Louisville, Ky.

DEAR SIR: Transportation: Switching at Louisville.

I am just in receipt of advice from the Bourbon Stock Yards tha
your switching rate- from 14th and Ormsby Avenue to the Bourbo
Stock Yards have been reduced to $1.00 per car.

Will you kindly advise if this information is correct and to wha
extent the switching rate will apply on business delivered to you b
the Southern Railway."

The following response was received from Mr. Goodwyn, date
November 1st, 1901:

746 "Yours of the 26th file 44-A. In reply thereto, beg to ad
vise that under date of October 14th I advised your Mr
Fitzgerald as follows:

"This is to advise you that effective on the 17th inst. the L. & N
switching charge for handling stock between the Bourbon Stock
Yards and the connecting points of interchange with L. & N. tracks
will be $1.00 per car. This charge has heretofore been $2.00 a car
Please acknowledge receipt.

Yours truly, D. M. GOODWYN, *G. F. A.*"

This notice of the Louisville & Nashville Railroad Company did
not indicate any change in the policy of that Company in the mat
ter of switching live stock coming from points competitive with
that road and was, therefore, understood to mean that the reduction

would apply only on live stock coming from local stations on the Southern Railway in Kentucky.

—— ——.

Subscribed and sworn to, before me, by T. C. Powell this the 15th day of January, 1903.

My commission expires the — day of ——.

—— ——

Notary Public, Jefferson County, Kentucky.

The further taking of the testimony was adjourned until Saturday, February 14th, 1903, to 2:30 o'clock P. M.

747 LOUISVILLE, KY., *February 14th*, 1903.

Met pursuant to adjournment, counsel on both sides being present.

It is agreed by and between the parties plaintiff and defendant that the affidavits of H. T. Watts and Coleman Meriwether filed herein on the motion for temporary injunction, together with the exhibits, maps filed therewith, shall be read upon the hearing of the action herein, as the depositions of the said parties.

THOMAS WELSH, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:

By Mr. DODD:

1. Will you please state your name, age, residence and occupation?

A. Thomas Welsh; 1165 Underhill Street; 39 years old.

2. What is your occupation?

A. Yard conductor for the Southern Railway.

3. How long have you been yard conductor for the Southern Railway Co.?

A. It will be five years in April, the coming April.

4. What are your duties as yard conductor for the Southern Railway Company in the operation?

A. Duties performed?

748 5. Yes.

A. Taking care of the switching to these industries out around 12th and Kentucky, out around these stock yards, The Globe Refining Co. and all around there.

6. Do you as yard conductor for the Southern Railway Co. have charge of the engines that transport live stock from 7th and Magnolia Streets where it is turned over to the railroad company for the stock yards, to those yards?

A. Yes, sir; in the day time.

7. How long have you been performing that service between 7th and Magnolia Street connection between the lines of the Southern Railway Co. and the L. & N. Railroad Company?

A. Well, I expect I have been out there in that territory about four years, in the day time.

8. Have you been there ever since the opening of the Central Stock Yards?

A. Yes sir.

9. What has been the practice of the Southern Railway Co. in making delivery of cars containing live stock destined to the stock yards, that were turned over to the Southern Railway at 7th and Magnolia for delivery at the Central Stock Yards; meaning by that what has been the course of conduct on the part of the Southern Railway Co. and its management of those cars respecting
749 prompt delivery of the said live stock and returning the empties?

A. We have got instructions to return the empties promptly.

10. From whom do you receive any such instructions?

A. From the train master of the K. & I. Bridge who has charge of the workmen, charge of us doing the work out in that territory, as the Southern has not and records, the K. & I. keep the records for the yard service, and he has jurisdiction over all switch engines out in that territory.

11. Has immediate authority then over you as yard conductor?

A. Yes sir.

12. I wish you would state whether or not you have observed those instructions as to prompt delivery of live stock from 7th and Magnolia to the Central Stock Yards?

A. Yes sir; I have.

13. And the return of the empties?

A. Yes sir.

14. I would like for you to tell about how long it takes for you to receive a car at 7th and Magnolia Streets destined to the Central Stock Yards, to take that car by way of the Southern Railway from 7th and Magnolia to the Central Yards, have the same unloaded and return the empty to the place at which you received the same, 7th and Magnolia?

A. It would take about thirty-five or forty minutes, that is the time you get the stock at 7th and Magnolia, go out there and
750 have it unloaded, and have it back there again, that is without meeting with any delays.

15. What do you mean by delays?

A. That is a single track you know, between the Central Stock Yards and the L. S. Junction, and very often you cannot get out there for some time on account of a train that is due, and very often we meet with trains switching there at 4th Street, the L. & N. switching into Mengel's, we are stopped there sometimes five to ten minutes, then we go down there to Floyd Street and are often stopped there by a train passing over there until that man changes all those levers, the switches in the tower, such things as that.

16. What would that be, considering all of these delays which may happen from time to time, what is the average time would you say from your experience, that it would require to take a loaded car at 7th and Magnolia Streets and live stock to the Central Yards, have the same unloaded, and return the empty back to the point at which you received it?

A. In one hour.

17. Where do you receive from the Louisville & Nashville Railroad Co. live stock that is destined to the Central Yards or any person doing business thereat?

A. At 7th and Magnolia.

18. Will you please state whether or not the engines of the
751 Southern Railroad Co. operate over the track connection between the main line of the Southern and the main line of the L. & N., from the Louisville Southern Junction as it is called, to the 7th and Magnolia Street connection?

A. Yes sir; they do.

19. Do the engines of the Southern Railway Co. run over these tracks?

A. Yes sir; the switch engines.

20. I mean the engines you have control of, that carry the live stock from where you receive it to where it is delivered at Central Yards?

A. Yes sir.

21. Will you please state whether that is at 7th and Magnolia Streets or the L. S. Junction? Where do you receive that stock, at what point?

A. It is set in by the L. & N. at what is known as 7th and Magnolia, at 7th Street, the track runs on Magnolia, it is set in there, that is where they make their interchange to the Southern and K. & I.

22. Do you come up to that point to get it, or does some one else deliver it to you over there westward towards the L. S. Junction as it is called?

A. No sir; we go up there and get it ourselves.

752 23. Do you operate engines and cars of the Southern Railway Co. over that connection?

A. Yes sir.

24. As conductor in general charge of the switching to industries in the portion of the City of Louisville including the Central Stock Yards, I will ask you to state whether or not facilities exist at the Central Stock Yards for the prompt handling of live stock that you may carry ther- for delivery?

A. Yes sir.

25. Whether they have facilities there to receive the stock or have it promptly unloaded?

A. Yes sir; they do.

26. Do they handle from this point of physical connection with the Louisville & Nashville Railroad Company, for the Southern Railway Co., dead freight as well as live freight?

A. No sir; I do not handle dead freight.

27. Are you in the yards or at the points of physical connection between the two tracks in the day time?

A. Yes sir.

28. Can you state whether or not dead freight is interchanged at that point with the Louisville & Nashville Railroad Co. by the Southern?

A. Oh, yes sir; all dead freight is interchanged at that point the same as stock, but there is another engine that runs what is
753 known as the transfer between 7th and Magnolia and Youngstown Yards, that takes all that freight in with them, and we take out freight and attend to these industries there in that territory. We do not go in until night, and for that reason I do not handle any of them.

29. Do you know of your own personal knowledge whether there is at the 7th and Magnolia Street connection between the railway systems, the Southern system and the L. & N., an interchange of traffic from day to day.

A. Yes sir.

30. Have you a letter of instructions that they gave to you with respect to the handling of the Louisville & Nashville Railroad Company's equipment containing live stock, and for the prompt delivery of the equipment back to the connection?

A. Yes sir.

31. Will you be kind enough to file that letter as part of your deposition?

A. Yes sir; I will do that.

32. Mark it Exhibit Welsh No. 1. I will ask you to state whether or not the equipment, meaning by that the cars containing live stock, which cars belong to the Louisville & Nashville Railroad Co., were handled promptly prior to the receipt of that letter?

754 A. Yes sir; they were handled pretty promptly, only the way it used to be before when the night men would take cars out there at night time they would leave them there until the next day, and the next day I would get all the empties out of the stock yards, bring them in and deliver them to the different roads, with the exception that on Sunday they used to retain two or three rack cars, L. & N. rack cars for out going stuff for the benefit of the L. & N. Railroad Company, that we could load for that road. Of course it is customary for you to hold a portion of each and every road's cars, so that if you catch loads back you can load the cars directly over their lines.

33. Was that for the benefit of outgoing traffic for the Louisville & Nashville, or the benefit of the Southern Railway Co.?

A. No sir; for the benefit of the Louisville & Nashville Railroad Company.

34. Did you ever have any request to have those held over there for the benefit of the Louisville & Nashville Railroad Co.?

A. Not any more than the fellow, a kind of acting agent, inspector, at 7th and Magnolia, when we made request for some empties, saying, it was very hard to get empties from the L. & N. at the time for some reason or other, I don't know of course why, but on my requesting them of him, he said, why don't you hold three or four of those cars there in case you need them so you will have
755 them on hand. That is the only time I know of.

35. What is the practice, acting on that letter which you have just filed, with respect to holding the cars, do you hold them under any conditions?

A. Under this letter?

36. Yes.

A. No sir.

37. What is your practice, meaning by that, did you detach your engines from the cars at all?

A. We return the cars promptly.

38. When you take a car load of live stock or a number of car loads of live stock, the empty cars back to the Louisville & Nashville Railroad to which they belong, do you detach the engine from them or do you wait for them to be unloaded and immediately return them?

A. We wait for them to be unloaded and immediately return them, for the simple reason we have to get them out of there anyhow, have to come back this way to do our work anyhow.

39. These same engines that carry the loaded live stock down there bring back the empties to the point where you receive them?

A. Yes sir.

40. Did you ever work for the Louisville & Nashville Railroad Company?

756 A. Yes sir; I worked there a great many years, the last time nine years.

41. In what capacity?

A. In different capacities; switched, broke, run yards and run a crew both.

42. Did you ever switch or act in the capacity of engineer or otherwise between South Louisville and the Bourbon yards?

A. Not as an engineer.

43. In what capacity did you act?

A. I worked on the transfer as a helper, and I have run a transfer.

44. For how long a time approximately?

A. I expect I was on the transfer off and on about seven years, I guess altogether, that is off and on from the time I started in with the L. & N.

45. Was prior or subsequent to the opening of the Central Stock Yards?

A. It was prior to that.

46. From your experience in that period of time, these nine years, what was the practice of the Louisville & Nashville Railroad Co. with respect to the removal from South Louisville to the Bourbon yards of live stock destined to that point? Did they move them with

757 a special engine drawing live stock alone, or did they take them in connection with dead freight, how was that?

A. They always took whatever there was to go over to East Louisville with the stock. Generally always we would switch the stock out to have it next the engine, on the head end or on the rear end, and take a cut of cars over with it, then we would chuck the cut of cars down what is known as the main track or any place where they wanted them, and hold the car of stock and place them in the yard.

47. How is that now, if you know from observation? how do they handle that live stock now from South Louisville to the Bourbon yards?

A. Now, according to what I can see and what I have heard——

Counsel for defendant objected to the statement by the witness of what he had heard.

48. What you have seen yourself, not what you have heard?

A. I see the engines that are handling the stock now, they have nothing else only the stock.

49. Do you know how the Louisville & Nashville Railroad Co. handles the freight from South Louisville to the 7th and Magnolia Street connection where the freight includes live stock destined to the Central Stock Yards; do they bring it up as they carry it to the Bourbon yards, excluded from all other traffic, or do they bring it with dead freight to 7th and Magnolia or whatever point connection is made; how is the traffic managed?

758 A. Do you mean stock for the Central Yard?

50. Yes.

A. Very often they come in there with cuts of cars held in there from what is known as the transfer run. We have on several different occasions waited at 7th and Magnolia for the stock, and the stock would be held over across from us by that cut of cars, and we would be sitting there waiting for it.

51. They bring it up with dead freight, other cars containing other traffic, instead of bringing it up as live stock exclusively?

A. Yes sir.

52. Where do they carry that to, do they carry it to 9th and Kentucky or those yards, then bring it back and put it on the Magnolia Street connection, or what do they do with it?

A. Yes sir; they pull them right in on what is known as the 10th Street yard. Of course I did not take notice just what tracks they did set it in on, I could see the stock right over there, the reason of that is I would be waiting out there, waiting for it. We would get a message that a car of stock or two cars of stock whichever the case may be, will leave South Louisville at such and such a time, and it will go into the main line yard first, that is the message we would receive. Of course it just kept us in such a position we could not take hold of anything else hardly, kept us out there looking for this stock, and very often we would go up to 7th and Magnolia and wait for this stock.

759 53. Why is it that you are telephoned with respect to live stock and not telephoned with respect to dead freight; is it because one is perishable and the other is not, or why is it?

A. Yes sir; because we are supposed to handle that stock.

54. How do you mean handle it promptly or just at your leisure?

A. Yes sir; promptly.

55. What class of freight do you give preference in handling as to promptness?

A. The first thing is live stock.

56. Is there any difference between perishable and live stock, or do they belong to the same classification?

A. I don't think any places take perishable out there. There is no other engine that attends to that part of the business, the man

who has it takes dead freight that belongs to these factories, things like that.

57. What is your practice now as yard conductor of the Southern Railway Co., and what was your practice with the Louisville & Nashville when you were in its employ with the respect of handling live stock; did you give it any preference, or do railroad companies give it any preference over dead freight, such as grain, corn and things of that kind?

A. They did in one sense of the word, when making up
760 their trains out on the road, they haul it to go over this transfer between East Louisville and South Louisville. This live stock gets the preference of the road.

58. When did they haul it altogether, before or subsequent to the opening of the Central Stock Yards?

A. It was before, because I was not with them after the opening of the Central Stock Yards?

59. Have you seen or known of your own knowledge since the opening of the Central Stock Yards whether any engine leaving South Louisville carries live stock exclusively to the Bourbon Yard?

A. Yes sir.

60. Do they or not do that now?

A. They do it now.

61. Did they do it before the opening of the Central Stock Yards?

A. No sir.

62. I believe I understood you when you began your deposition that you were train conductor for the purpose of making deliveries at the various industries in the southern part of the City of Louisville including Central Stock Yard, is that true?

A. That is true.

63. You receive that as a switching duty to be performed by you, do you not?

A. Yes sir.

761 64. Is the Central Stock Yards for switching purposes considered as being within or without the switching limits of 7th and Magnolia Street?

A. It is a switch engine that handles all the business for them.

65. Do they handle the business for the Central Stock Yards, that is destined to the Central Stock Yards, just the same or in any respect differently from commodities that may be delivered at some other industry on the line of the Southern Railway in the City of Louisville or its vicinity?

A. Just the same.

66. Is there or not any discrimination on the part of the Southern Railway Co. in handling of freight, whether live stock or dead freight reaching the City of Louisville for an industry, whether the same comes over the Southern Railway or any other common carrier?

A. None whatever at all. Of course stock is given preference over all other stock.

67. I am speaking now as to whether or not you distinguish as between railroads, whether you make any prompt delivery or dis-

crimination as against the Louisville & Nashville, or in favor of or as against the B. & O. S. W. or any other roads, how is that handled?

A. None whatever at all. In fact if there is anything of
762 the kind going on the L. & N. would get the first delivery for the simple reason that would be the first point we pass to make these deliveries. Say for instance, we have stock out of the Central yards for the Panhandle, the Big Four and the L. & N. We make our L. & N. delivery first because that is the first point on the road.

68. Do I understand from you that the L. & N. Railroad Co. handles stock out of the Central Stock Yards for points east?

A. Oh, yes sir.

69. Is there any discrimination against the L. & N. for stock coming out of the Central yards to other points as against the other roads?

A. No sir; none whatever at all.

70. What roads contain any connection with the Central Stock Yards, enter the said yards, other than the Southern Railway? Has any other railroad got trackage in there?

A. No sir.

71. Has the Southern Railroad Co. any trackage in the Bourbon yards?

A. No sir.

72. If there is any trackage of any railroad into the Bourbon yards other than the Louisville & Nashville, do you know of it?

A. No sir.

763 73. If there is any trackage into the Central yards other than the Southern Railway Co., do you know of it?

A. No sir.

74. Are you in those yards from day to day?

A. Every day that I am working.

75. Suppose that live stock is received by the I. C. at some of its stations on its lines destined to the Bourbon yards, where is that stock turned over to the Louisville & Nashville for delivery at the Bourbon yards?

A. By the I. C.?

76. Yes.

A. It is turned over at 9th and Ormsby Avenue.

77. What is that track called?

A. It is between the I. C. and 9th Street, it is called the hub track.

78. You have previously stated that you had operated in some capacity trains, or been connected with their operation by the Louisville & Nashville, from South Louisville and 7th and Magnolia to the Bourbon yards. I will ask you to state whether or not the distance is farther or less from the hub track which you have mentioned at 9th and Ormsby to the Bourbon yards than the distance from 7th and Magnolia to the Bourbon yards?

A. The distance from 7th and Magnolia is the shortest dis-
764 tance to the Bourbon yards, because it is two squares down. 7th to 9th is two squares, and from there out 9th Street and

down Ormsby Avenue where the hub track runs to the I. C., between 9th and 14th.

79. Making about how much distance then between the hub track and 7th and Magnolia?

A. About half a mile, I suppose, along there.

80. About half a mile?

A. Yes, sir; somewhere in that neighborhood.

81. Where the Louisville & Nashville Railroad Co. receives stock from the Illinois Central at the hub track you have mentioned, what is the distance to the Bourbon Yards? How much greater would that distance be, or would it be as great as the distance of stock that is delivered by the L. & N. for the Central Yards at 7th and Magnolia? In other words, is the distance greater from the hub track to the Bourbon Yards than from the 7th and Magnolia Street track to the yards or less, how is that?

A. From the hub track to the Bourbon yards is the greatest distance.

82. Is that farther than from the 7th and Magnolia Street connection to the Central Stock Yards?

A. Yes sir.

83. Have you operated over both lines?

A. I have been over the hub track. I have not run between 9th Street and South Louisville, I have not done any runs be-
765 tween there, but I have been over the track many a time.

84. You know the distance?

A. Yes sir.

85. You have been over the track a number of times whether in the operation of trains or not?

A. Yes sir.

86. If I understand you then the distance from the hub track at 9th and Ormsby to the Bourbon yards is greater than the distance from the 7th and Magnolia Street connection of the L. & N. to the Central yards?

A. It is bound to be.

87. Assuming that all live stock received and consigned to the Bourbon Stock Yards over the I. C. is received at the hub track, and assuming that all of the live stock sent over the Southern Railway for the Bourbon Stock Yards is delivered at 7th and Magnolia Street-, which would be the greater distance for delivery at the Bourbon yards, from the hub track or the 7th and Magnolia Street track?

A. From the hub track, because it is two more squares down to the hub track.

88. Two squares down, and how many squares west?

A. About five.

89. About five west and two south?

A. From 9th to 14th.

766 90. Prior to the construction of the Central Stock Yard and during the time that you were employed by the Louisville & Nashville Railroad Co., was there ever any delay or laying over of stock at South Louisville that was destined to the Bourbon Yard?

A. There was many and many a time it was delayed.

91. Why, and what was it delayed for?

A. Very often there would be stock come in on these trains, and there would be no engine over in that territory, and the consequence was they would have to wait for an engine to come from East Louisville over there to get this stock. They would bring a cut of cars over with them to South Louisville, put that cut of cars away, then come around on this end and switch out another cut, probably have a lot of switching to do on that train, or just go in and make up their cut of cars and go back again.

92. About how long was that stock delayed waiting for an engine to come from East Louisville?

A. Very often it would come in there in the morning just after the night engine would leave there, they would always try to get away from there by six o'clock, everybody wanted to quit at six o'clock, and maybe the stock would not get over there before about nine o'clock in the morning, and by the time they would get over there, get that cut of cars ready, do that switching and get back again, probably three or four hours.

93. Did they handle the live stock then received at South
767 Louisville that was destined to the Bourbon yards with great dispatch, or did that wait their convenience for carrying it around to East Louisville?

A. You took everything that was over there to go that way with the stock when you went, that is the way they used to do.

94. Did they wait their convenience and carry it with dead freight?

A. No, they carried dead freight and perishable.

95. I believe you stated that they sometimes now, as you have seen, carry live stock alone?

A. Yes sir.

96. Without dead freight?

A. Yes sir.

97. Did they handle the live stock then when there was but one stock yard here, which was the Bourbon yard, as efficiently as they do now?

A. No sir.

98. Where live stock is received over the Louisville & Nashville and reaches South Louisville for delivery to the Bourbon yards, and live stock is also received, whether in the same car or not, for delivery at the Central Yards and turned over at 7th and Magnolia Streets, which is the greater distance, from South Louisville to the Bourbon yards or from 7th and Magnolia to the
768 Central yards?

A. From South Louisville to the Bourbon yards is, because that was, used to be always considered five miles between East Louisville and South Louisville, while it would not be over two miles or two miles and a quarter anyhow to 7th and Magnolia.

99. In the operation of trains making delivery at the Central yards and other industries, is there any discrimination made in your movement of those things for points of delivery, whether the

same are received over the Southern, the I. C., the B. & O. Southwestern or any other road?

A. No sir; none whatever.

100. Do you handle them all alike, with the same care, efficiency and promptness of delivery?

A. Yes sir.

101. Where do you have your interchange of traffic with the B. & O. Southwestern?

A. At Youngtown.

102. Where do you have your live stock delivery to the Southern for delivery at the Central yards delivered?

A. By whom?

103. At what point do you receive it from the I. C., where it is destined to the Central yards?

A. We receive stock from the I. C. where it is destined to
769 the Central Yards down at 14th and Kentucky Streets, and stock from the Texas is shoved in at 14th and Oak Streets, on the same track, only one is shoved in at one end and the other at the other end.

104. You say the Texas, do you mean the Louisville, Henderson & St. Louis?

A. Yes sir. They make delivery on the same track down there.

105. On the same track?

A. Yes sir. Stock from the L. & N. of course we get at 7th and Magnolia. Stock from the Monon we get at Youngtown, and the B. & O. the same way.

106. Do you make any distinction in taking that live stock destined to the Central yard as to whether it comes from one road or the other?

A. None whatever at all, but get it there as quick as we can is the instruction, to get it there as quick as we can.

107. Your general instruction is to make prompt delivery regardless of from what source it is delivered to you for delivery?

A. Yes sir.

Cross-examination by Mr. BRUCE:

108. You spoke of the L. & N. handling cars of live stock, cars out of the Central Stock Yards. You don't mean the L. & N.
770 engines run to the Central Stock Yards, do you?

A. I never said anything about the L. & N. handling live stock cars out here. I stated about L. & N. stock cars.

109. As a matter of fact, the L. & N. does not run to Central Stock Yards at all, does it?

A. No.

110. You spoke of the L. & N. carrying live stock to its main line yard; where is its main line yard?

A. What is known I said as the main line yard.

111. What is known as its main line yard?

A. Down here at 10th and Kentucky. That is what they call them, they used to have one named East Louisville, South Louisville and main line; that is the way they used to call the yard.

112. You spoke of some person once asking you to hold some empty L. & N. Cars at the Central Stock Yards until they could be loaded with live stock to return?

A. Yes sir.

113. Who was that person?

A. Mr. Gebhart, agent and car inspector, not exactly agent but he kind of represents that part of it at times.

114. Give us his first name?

A. Martin.

771 115. Martin Gebhart?

A. Yes sir.

The further taking of these depositions was thereupon adjourned until Wednesday February 18th, at four o'clock P. M.

772 WEDNESDAY, *February* 18*th*, 1903.

Met pursuant to adjournment, and adjourned until Thursday, February 19th, 1903, to 3.30 P. M.

THURSDAY, *February* 19*th*, 1903.

Met pursuant to adjournment.

H. B. SPENCER, called in behalf of the plaintiff, being duly sworn, and examined by Mr. Dodd, testified as follows:—

1. Mr. Spencer, will you give your name, age, residence and occupation?

A. H. B. Spencer; age 29; General Manager St. Louis-Louisville Line Southern Railway Company; residence, St. Louis.

2. Mr. Spencer, what character of service is given by Railroad Companies in the handling of live stock?

A. Live stock is to be handled promptly, delay avoided wherever possible; the question of loading and unloading has to be carefully handled so as to insure prompt time after the shipment is in the car.

3. From what transportational standpoint, to what class does live stock belong?

A. In the movement of live stock we consider it—well, it belongs to what is known as high class freight; perishable merchan-

773 dise and live stock is, however, the most important of those.

4. It being of that class, what is the general custom of Railroad Companies in the handling of such live stock; in that, I mean, do they give it preference over dead freight, or handle it in connection with dead freight, at delivery points?

A. Well, they give it preference over dead freight, and endeavor to make the movement as promptly as possible, even within terminal limits, or through movements.

5. Mr. Spencer, what is the custom of Railroad Companies with respect to the interchange of cars containing live stock, on connecting lines, where the interchange or transfer is for delivery purposes

only; by that, do they transfer in bulk in the same car, or transfer from one car to another?

A. Within terminal limits, it is customary for the car to run through, in fact even if the car is going—if it is an ordinary interchange point, the car ordinarily runs through; in other words, we do not, as a rule, transfer live stock, unless the car is in bad order.

6. I understand from that, that ordinarily the delivery is made in the car in which it is originally loaded, from the point of origin?

A. That is the practice as a rule—yes, sir.

7. Mr. Spencer, is the matter of the interchange of cars
774 from one railway system to another regulated by any Association or agreement between Railroad Companies?

Objected to by counsel for defendant.

A. It has been understood, and has been the practice of railroads for a long time, to permit their cars to run through; that is, to be not transferred at junction points. There is a fixed code of rules just adopted by most of the railroads in this country, which governs that; it is known as the Per Diem Rules of the American Railway Association.

8. I exhibit to you what purports to be a pamphlet containing the American Railway Association's Code of Per Diem Rules, and ask you whether or not that is the set of rules to which you have reference?

Objected to by counsel for defendant.

A. Yes, these are the rules issued by our company, the Southern Railway Company, with respect to the government of interchange of cars under the per diem agreement; it is the same rules—Identically the same rules that the American Railway Association issued, and all lines subscribed to, or practically all lines.

9. I wish you would state, Mr. Spencer whether or not the Southern Railway Company is a party to those rules, and regulated by them?

Objected to by counsel for defendant.

775 A. Yes, sir; we are a party to those rules, and have agreed, in writing, that we will continue them at least one year from July 1st, 1902.

10. I will ask you to file the pamphlet which has been exhibited to you, and make at part of your deposition, marked "Exhibit H. B. Spencer No. 1?"

Objected to by counsel for defendant.

A. I do so.

11. Mr. Spencer, do you know whether or not the defendant, the Louisville & Nashville Railroad Company, is regulated by the rules to which you have just referred, and a copy of which you have filed?

Objected to by counsel for defendant.

A. It is our understanding that the L. & N. is governed by those rules, and we interchange with them on the basis of those rules.

Counsel for the defendant excepts to the answer.

12. Mr. Spencer, I call your attention to the publication just filed on page 10, which is headed as follows: "List of railroad companies holding membership in the American Railway Association on behalf of which 'Per Diem Rules Agreements' have been filed up to this date," and ask you whether or not on page 13 of the publication so exhibited, the Louisville & Nashville does not appear to be a
776 party to that agreement?

Objected to by counsel for defendant.

A. On page 13 the L. & N.—the Louisville & Nashville's name is down, and my understanding is that they are a party to the agreement.

13. Mr. Spencer, isn't it also true from the same publication that after giving the list of the Railway Companies that are parties to the agreement, that beginning on page 16 and concluding on page 18, there are a number of roads which are not parties to the agreement, as shown from that publication?

Objected to by counsel for defendant.

A. This book so stated that, Mr. Dodd.

14. Mr. Spencer, are you familiar with the terminal facilities of the Southern Railway Company in Louisville, Ky.?

A. Yes, sir; I am familiar with the terminals of the Southern Railway Company in Kentucky at Louisville.

15. Mr. Spencer, where live stock is turned over by a connecting carrier in Louisville for delivery at the Central Stock Yards, what character of movement is had on the part of the Southern, where the same comes from a connecting carrier?

A. We, as a rule, receive advices from the connecting carrier that they have live stock coming into Louisville destined to the Central Stock Yards, giving the probable time of arrival; we then
777 arrange our switching crews so that that stock can be promptly received from the connecting carrier and delivered to the Central Yards, without delay; in other words, we make a special effort to avoid delay to live stock.

16. Mr. Spencer, is that movement a switching movement, or a connecting through carrier's movement? What character of movement is that, in that regard, and what character of charge is made by the Southern Railway Company for such service as it may render in making the delivery?

Objected to by counsel for defendant.

A. The movement is considered a switching movement, and is handled by what is known as a switch crew and switching engine; the charge is a switching charge per car, similar to what is charged to other industries at Louisville.

17. Does the Southern Railway Company in that traffic so han-

dled, participate to any extent in the through rate, or Louisville rate, on the live stock so delivered to it at the point of connection for delivery at the Central Yards?

Objected to by counsel for defendant.

A. No, sir; we receive a switching charge for that service, regardless of through rate or anything else; we are not interested, in other words, in the through rate of that shipment.

778 18. Mr. Spencer, if live stock is received at some point on the Southern Railway destined to the Bourbon Stock Yards, what does the Southern Railway Company do with that live stock, and what is the difference in the handling of that in making delivery at the Bourbon Yards by the L. & N., from the character of service rendered by the Southern in making a delivery at the Central Yards?

Objected to by counsel for defendant.

A. Well, a car coming off of the Southern Railway would go into its train yard, there the car would be taken out of the train promptly and immediate delivery made to the L. & N. We would, in cases of that kind, notify the L. & N. in advance that we had a car of stock for them, and about the time that it would be delivered. My understanding is that they would move a car with a switch engine to the Bourbon Yards, or a switching crew; they charge a shipping charge for that delivery.

Counsel for defendant excepts to the answer.

19. In that state of case, the Southern Railway would get the Louisville rate, would it not, just as the Louisville & Nashville would get the Louisville rate if it was going to the Central Yards?

Objected to by counsel for defendant.

A. I can't answer that question; it would depend whether the shipment was a shipment originating and destined beyond Louisville, and the rate maybe would be based on the particular shipment.

779 20. I have assumed, Mr. Spencer, in asking the preceding question, that in each instance that the shipment was made on the Southern Railway for Louisville, and delivery at the Bourbon Yards, and the shipment received at a point on the Louisville & Nashville Railroad for Louisville for delivery at the Central Yards, whether or not in each instance the handling carrier would not receive the full Louisville rate?

A. A shipment destined to Louisville over the Southern Railway, carrying the Louisville rate, from a non-competitive point, and delivered to the Bourbon Yards, would be the Louisville rate plus the L. & N. switch charge; from a competitive point, it would be the Louisville rate, the L. & N. charge being absorbed by the Southern Company. I am not familiar with the basis that the L. & N. makes for their local cattle rate—local live stock rates to Louisville, and therefore cannot say what their practice is.

21. Do you know whether or not the Southern Railway Company

has, in such traffic as has come over the Louisville & Nashville Rail road, and turned over to the Southern Railway for delivery at th Central Yards, participated in the through rate, to any extent, wit the Louisville & Nashville, or confined itself to the switching charge how has that been?

A. We have received a switching charge; charge for the traffi that we have over the L. & N., and we are not interested in what th through rate to Louisville has been.

780 LOUISVILLE, KY., *February* 21*st*, 1903.

Met pursuant to adjournment, counsel on both sides being presen and the taking of these depositions *were* continued as follows:

BENNETT H. YOUNG, called for the plaintiff, being duly sworn and examined by Mr. Dodd for the plaintiff, testified as follows:

1. Will you please state your name, residence and occupation?

A. My name is Bennett H. Young; I reside in Louisville, and am a lawyer.

2. I will ask you to state whether or not you have ever had any connection with the Kentucky & Indiana Bridge Co., and in the construction of the Louisville Southern Railway Co.?

A. I had. I was President of the Kentucky & Indiana Bridge Co., and was such during its conctruction, and I was practically President of the Southern Railway Co., being President of the Construction Co. which constructed it, and after its completion being its President.

3. I will ask you to state whether or not there ever was any contract made between the Kentucky & Indiana Bridge Co. and the Louisville Southern Railroad Co. with respect to any connection being made between tracks of the Louisville Southern Rail-
781 road Company and the K. & I. Bridge Co., and the Louisville & Nashville Railroad Company's tracks at 7th and Magnolia Street?

A. Yes sir; originally the Kentucky & Indiana Bridge Co. had its line constructed up to Magnolia Avenue and 12th Street.

By Mr. BRUCE: I would like to ask if that contract referred to by counsel for plaintiff was in writing?

By the WITNESS: It was.

By Mr. BRUCE: Then I object to the statement of its contents?

A. The purpose in making this line around the southern part of the City of Louisville through Magnolia Avenue was originally to connect with the Southern Railway when constructed, to give an opportunity to the Southern Railway to get an entrance into the City of Louisville. It was finally decided and agreed that the line should be constructed jointly by the Kentucky & Indiana Bridge Co. and the Louisville Southern Railway Co. from 12th Street and Magnolia Avenue to 7th Street and Magnolia Avenue where there was a physical connection made with the tracks of the Louisville & Nashville Railroad. The object of this was to transfer freight from

the Kentucky & Indiana Bridge Co. or from the Louisville Southern Railway to the Louisville & Nashville Railroad, to make a connection at 7th and Magnolia.

4. With what road?

A. With the Louisville & Nashville Railroad.

782 5. It is in the record of this case that on the 29th day of November, 1901, you made a affidavit, parts of which read as follows:—

"That on June 21st, 1887, a contract was concluded and executed between said Kentucky & Indiana Bridge Co. and the Louisville Southern Railroad Co., and that in said contract the following section appears to-wit: '7 It is mutually agreed between the parties hereto that they wil construct and complete on or before September 1st, 1887, a single line of track with the necessary switchings and sidings eastwardly along Magnolia Avenue from the junction of the Bridge Company's and the railroad company's tracks to connection with the main tracks of the Louisville & Nashville Railroad Co. at or near the intersection of Magnolia Avenue and 7th Street, the same to be constructed and maintained at the joint expense of the parties hereto, and operated by the Railroad Company in the manner herein described for the operation and maintenance of the railroad between Magnolia Avenue and the railroad company's yards between Market and Bank Streets.' "

I will ask you to state whether or not any such contract containing any such clause was ever entered into by and between the Louisville Southern Railway and the K. & L. Bridge Co.?

Objected to by Counsel for defendant.

783 A. A contract was made between the Louisville Southern Railroad Co. and the Kentucky & Indiana Bridge Co. on the date named in the interrogatory, and one of the clauses in the contract was that which you have read. That was in the contract and was one of the grounds which induced the execution of the contract by the parties.

6. At what point was the point of junction between the Louisville Southern Railway Co. at that time or its tracks, and the tracks of the Kentucky & Indiana Bridge Co., before the construction of the connecting track to which you have just referred on Magnolia Street? At what point was the junction of the Louisville Southern Railway Company's and the K. & I. Bridge Company's tracks?

A. At 12th and Magnolia Avenue. The Southern Railway came in from Shelbyville around the City of Louisville, connected with the tracks of the Kentucky & Indiana Bridge Co. at 12th and Magnolia Avenue.

7. I will ask you to state what reason if any induced the Louisville Southern Railway Co. at that time in insisting upon the right to operate its trains in, upon and over said line to be constructed between the junction points at 12th and Magnolia and the physical connection with the Louisville & Nashville Railroad at 7th and Magnolia Streets?

A. The object was to get a connection by which business should

be transferred from the Louisville Southern to the Louisville
784 & Nashville Railroad, and from the Louisville & Nashville Railroad to the Louisville Southern.

8. Was there any right reserved then to the Louisville Southern Railway of operating that track independently of the K. & I. Bridge Co.?

A. They each had the right to operate over that road independently of each other, but it was a joint track. Each had the right to operate its trains over that, the line was held by each in common.

9. Do you know whether or not the Louisville Southern Railway Co. as constructed within the time you have mentioned has ceased to exist, and if so what railroad company if any succeeded to its rights?

A. I know that the Louisville Southern Railway Co. was sold under a decree of the United States Circuit Court, and was transferred to the Southern Railway Co. in Kentucky, and the Southern Railway Co. in Kentucky acquired all its rights, privileges, franchises and property of every kind.

10. I will ask you to state whether or not the Southern Railway in Kentucky acquired, under the decree to which you have made reference, the contract rights mentioned in section 7 of the contract which you have referred to hereinbefore?

785 Objected to by counsel for defendant.

A. It did.

Counsel for defendant declined to cross-examine.

786 A. PHILBRICK, called for the plaintiff, being duly sworn and examined by Mr. Dodd for the plaintiff, deposed as follows:

1. Will you please state your name, age, residence and occupation.

A. A. Philbrick; 40 years of age, reside in Louisville, Ky.; I am in the railroad service, Superintendent of the Illinois Central Railroad.

2. How long have you been engaged in the railroad service?

A. About twenty-two years altogether.

3. In what classification does live stock belong in railroad traffic, meaning by that is it classed with dead freight, high class freight, or what is its classification?

A. It is high class perishable freight, given preference in movements.

4. What is the custom of railroad companies as to the handling of live stock, or cars containing live stock?

A. To give them prompt movement.

5. What is the custom of railroad companies as to the handling of cars containing live stock, where delivery by one road to the other is for the purpose of making delivery only, meaning by that, do they require the breaking of bulk, or do they permit their cars containing live stock to be delivered by the connecting carrier for that purpose?

A. It is usual that live stock is delivered at destination in
787 the car.

6. Is it practical to make a transfer of live stock from one car to the other where the further movement of such live stock is only for a limited distance and for delivery purposes only?

A. It is not considered so, no sir.

7. Is the question of the interchange of cars containing live stock regulated by any agreement between the railroad companies, if you know?

A. Yes sir; it is included in with other freight. It is arranged as to how the deliveries shall be made.

8. Is there any exemption from transfer of freight of one class or the other, if so, what class is exempted from transfer if there is any such exemption?

A. By agreement, usually freight which would be liable to be damaged by transfer or materially delayed in transfer is exempted from transfer.

9. Is that the custom prevailing between railroad companies generally?

A. Yes sir.

10. What is the custom with railroad companies with respect to the interchange of cars containing live stock to connecting lines, where the interchange or transfer is purely for delivery purposes and not for further transportation to a point on the connecting carrier's line; how is that transfer made?

788 A. It is the custom to allow the car to be delivered at destination.

11. Would there be in that state of case any transfer of the live stock from one car to the other?

A. No sir.

12. Would it be practical to make a transfer of live stock from one car to the other where the stock was to be delivered within a few miles of the point of such transfer?

A. No sir.

13. What is the basis between railroad companies, and the prevailing custom, with respect to use of the cars, where the cars of the initial carrier containing live stock are delivered to the connecting carrier for delivery purposes at the terminal point of the initial carrier, during the time of the detention of the car? Is there any rule respecting the charges for the detention of that car?

A. Yes sir; nearly all roads work under what they call the per diem agreement.

By Mr. BRUCE: Is that agreement in writing?

A. It is in print, the way that I have seen it.

By Mr. BRUCE: Then I object to the statement of the witness of that agreement.

14. Have you seen the printed form of the American Rail-
789 way Association of per diem rules, a copy of which I exhibit to you?

A. Yes sir.

15. Are those the rules under which the per diem charges are regulated by the different railway systems under the custom to which you refer?

A. Yes sir; these are the rules which govern at the present time.

16. What were the rules prior to the adoption of that code of rules, with respect to the interchange of cars containing high class perishable freight like live stock, when interchange was made for delivery purposes only, if you know?

A. In reference to charging for use of the cars?

17. Yes sir.

A. Previous to the adoption of these rules no charge was made for the use of the cars during that time, except a charge made on a mileage basis, which did not apply to switching movements.

18. The published pamphlet purporting to be the American Railway Association Code of Per Diem Rules is the one heretofore filed with the deposition of Mr. H. B. Spencer, and marked H. B. Spencer No. 1. Are they the now existing rules of the American Railway Association?

A. Yes sir.

19. I will ask you to examine this pamphlet and state if
790 you know when these rules went into effect governing the American Railway per diem system?

A. The 1st of July, 1902.

20. In what respect did those rules, if any, differ from the rules theretofore prevailing between the railway systems, and the interchange of live stock at the terminal point for delivery purposes, respecting the compensation to the initial carrier for the use of its car while detained, if any?

A. Previous to the adoption of these rules no charge was made for the use of the car, but since the adoption of these rules a fixed rate per day is charged for the car while in the possession of the foreign line.

21. What was the custom prior to the adoption of these rules with respect to the interchange of cars by one railway system to the other, where the delivery was made for switching and delivery purposes only? Was the rule to make delivery in the original car in which it was received, or was it transferred from one car to the other on demand by the intitial carrier where live stock was contained in the car?

A. It was customary to deliver the car and permit it to go to destination.

22. You are now as I understand, an official of the Illinois Central Railroad Co., are you not?

791 A. Yes sir.

23. Suppose I should be at a point on your line desiring to ship a car load of live stock to the Bourbon Stock Yards, Louisville, Ky., over your line the Illinois Central Railway; what would you do with respect to my request, and what would you do in carrying into execution the shipper's directions with respect to the delivery of that live stock; what would you do with it?

A. The live stock would be delivered to the L. & N. Railroad Co. in Louisville to be shipped by them to the Bourbon Stock Yards.

24. Would there be a demand or not on the part of the Illinois Central Railroad, at the point of physical connection between the tracks of the Illinois Central and the Louisville & Nashville Railroad Co. for the transfer of the live stock from the car of the Illinois Central to a car of the Louisville & Nashville Railroad Co., or would live stock originating at such point of shipment go on in the car in which it was loaded to the Bourbon yards?

A. No request would be made for transfer, the stock would go on in the car to the Bourbon yards.

25. Is that in accordance or not with the general practice for years?

A. Yes sir; as far as I know.

26. Is there any difference on the part of the Illinois Central Railroad Co. in its handling of live stock with respect to the
792 delivery of the — containing the live stock whether it is destined to the Bourbon yards or the Central Stock yards?

A. No sir.

27. Where do you make delivery to the Louisville & Nashville where the destination is the Bourbon yards, at what point in the City of Louisville?

A. Usually near Oak Street.

28. What is the track known as?

A. It is taken out of the hub track.

29. Where would you make deliveries to the Southern Railway Co. if a car originating from the same point should be destined to the Central Stock Yards?

A. It would leave our tracks at nearly the same point, over another connection.

30. Is that connection with the Southern Railway Co.?

A. With the K. & I. and Southern, it is the same thing.

31. In the state of case just mentioned to you, wherein I have shipped a car load of live stock say from Princeton, Ky. to the Bourbon Stock Yards, I will ask you to state whether or not the Louisville & Nashville Railroad Co. in taking that car at the hub track and making delivery thereof at the Bourbon yards would participate to any extent in your Louisville rate from Princeton to Louisville?

793 A. No sir.

32. Now suppose at the same time or a different time, and from the same point I should ship over your road the Illinois Central Railroad, a car load of live stock destined to the Central Stock Yards, and the same was delivered by you to the Southern Railway for delivery by it to the Central Yards at that point of connection between your tracks and those of the Southern Railway Co., would the Southern Railway Co. participate to any extent in your through tariff or any tariff to Louisville?

A. No sir; ordinarily the switching charge is added to the Louisville rate and the switching service paid for by the railroad bringing the stock in to Louisville.

33. Where a common carrier, a railroad company, transfers its cars containing freight of any kind to a common carrier at the point

of delivery for switching movement only in making delivery, is there any joint tariff at all as to freight rates from the initial point to the city at which the delivery is made?

A. Not beyond the addition of the switching charge to the regular rate to the point of destination.

34. Does that enter into a pro rata basis upon the contract rate?

A. No sir.

35. How is that affected by the through rate, is it an addition to it?

794 A. It is simply an addition, it is a fixed amount ordinarily added to the through rate.

36. Is the quantum of compensation for the initial carrier affected by the question of charges for delivery purposes at all?

A. No sir. Sometimes the switching charge is paid by the industry receiving the freight, and at other times the fixed, the same amount is added to the fixed charge to the point of destination.

37. Is there any difference in the operation and management of railway companies in the permission of the one or the other to allow its cars to leave its tracks to be handled by a connecting carrier, where interchange and transfer is for delivery purposes only, from that in which it is delivered to the connecting carrier to be transported to a considerable distance beyond the point of interchange?

A. The only difference is in the per diem rules. In either case the line receiving the car pays the line delivering the car a certain rate per day for the time that the car is in possession of the line receiving the car. But if the car is delivered for a switching movement, while the line receiving the car pays the line delivering the car the same rate per day, a reclaim of a fixed amount is named upon the line delivering the car, regardless of the number of days the car has been in the possession of the line receiving the car.

38. Suppose a car of one road is delivered to another railway system for delivery purposes which does not require over an

795 hour for the purpose of making that delivery and the return of the empty back to the point of connection where the delivery was made, is there now or has there ever been in such state of case any charge for the use of such car in making delivery?

A. No sir.

39. Before the entering into the agreement to which you have referred, was there ever any question between common carriers of the delivery of the equipment of the one to the other, where such delivery was only made for the purpose of having a delivery made within the switching limits of the point of interchange, and where said interchange was of live stock or cars containing live stock?

A. Well, not to my knowledge.

40. Live stock, as I understand from your previous answers, has at all times so far as you know been regarded as high class freight demanding immediate attention because of its perishable nature?

A. Yes sir.

41. Has or not that classification been universal with railway systems for a number of years prior to July 1st, 1902, or since that time only?

A. All the time.

Cross-examination by Mr. BRUCE:

42. Do I understand you to say that the Illinois Central
796 Railroad Co. recognizes the right of any shipper anywhere to demand that when the Illinois Central gets that car to its destination it shall deliver its car over to a connecting carrier to be hauled by the connecting carrier or delivered by the connecting carrier whether the Illinois Central wants it thus done or not?

A. I don't think that question was asked.

43. It does not concede any such right, does it?

A. The Illinois Central Railroad conforms to the general practice in such things, but I don't think that question was asked at all.

44. There is no general practice, is there, by which railroad companies concede the right of shippers to demand that the railroad company carrying the freight shall deliver its own cars to other railroad companies, either for the purpose of transporting or delivery, whether it suits the first railroad company or not?

A. No, there is no such practice.

45. No such custom?

A. No such custom as that.

46. For instance, going into the City of Memphis, if some shipper over the Illinois Central Railroad would demand of it that when it got that freight to the City of Memphis the Illinois Central
797 would turn the car containing the freight over to some connecting road to be delivered by the connecting road, would the Illinois Central Railroad Co. concede the right of the shipper to make that character of demand?

Objected to by counsel for plaintiff because the only interrogation on the part of this witness has been with respect to the interchange for delivery purposes of live stock at the terminal point, and does not relate to the question of operating with possession for further movement of the car over the line of the connecting carrier or to dead freight?

A. Those things are handled between railroads.

48. Do you mean by agreement between the railroads?

A. Yes sir.

49. Has the Illinois Central Railroad Co. any live stock depot on its line in the City of Louisville?

A. No sir. You mean now specially a live stock depot, you mean the delivery point?

50. Yes.

A. No.

51. Therefore if the Illinois Central Railroad Co. brings live stock to the City of Louisville and desires to deliver it in the City of Louisville, it is bound to deliver it at some live stock depot on another company's line, is it not?

798 A. Yes sir; that is as a general proposition. Of course it would be possible to deliver that live stock at any delivery track on its line if circumstances were such that it was desirable to do so.

52. But the circumstances are not such that it is desirable for the

Illinois Central Railroad Co. to deliver live stock that it brings into the City of Louisville at any side track such as you have referred to?

A. Not as a general proposition, no.

53. So if it desires to bring live stock to the City of Louisville and deliver the same here in the City of Louisville, it is bound to deliver it at a live stock depot on some other company's line?

A. Yes sir.

By Mr. DODD:

54. Is it or not a fact that the Illinois Central Railroad Company has an open door policy in the handling of its live stock in that it will make a delivery at any point, whether on its line or the line of the connecting carrier, at a terminal point, according as directed by the shipper?

A. It would accom-odate the shipper in that respect.

55. You have stated in response to a cross interrogatory by Mr. Bruce that the question of the handling of a car interchanged by one road to another is a matter of agreement between the roads.

799 I will ask you to state whether or not it is true that where that interchange is made at a terminal point for delivery purposes only, if it is not the universal custom of railroad companies to allow a transfer in bulk without transferring the live stock in such state of case where delivery only is to be made?

A. Yes sir; that is the common practice.

By Mr. BRUCE:

56. Where have you been engaged for the Illinois Central Railroad Company at terminal points where live stock was handled?

A. At Memphis, and Louisville; also at New Orleans and Chicago, previous to that time.

LOUISVILLE, KY., *March 27th*, 1903.

Met pursuant to agreement at the office of Messrs. Dodd & Dodd, Louisville Trust Co. building, counsel on both sides being present, and the taking of these depositions was continued as follows:

800 E. A. BILLINGTON, called for the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. DODD:

1. What is your name, age, residence and occupation?

A. E. A. Billington; 3004 Alford Avenue; yard clerk by occupation.

2. You are yard clerk for what road or company?

A. I have been yard clerk for the K. & I. up until yesterday, I resigned yesterday.

3. Up until yesterday?

A. Yes sir.

4. What company handles the interchange traffic of the Southern Railway Co. at terminals in Louisville?

A. The K. & I. Bridge and Railroad Company.

5. Is there a record kept of the time of delivery of interchange cars with other railroad companies, between the Southern and Louisville & Nashville; if so, by what company is it kept and how
801 is it kept?

A. The K. & I. have a record at 7th and Magnolia showing the time of delivery of cars to the L. & N., and the time the L. & N. pulls them away. They also keep a record of cars returned from the L. & N. and delivered to the K. & I. Bridge Co. by the L. & N., keeping the time received and the time moved by the K. & I.

6. By what engines is that interchange of the Southern with the L. & N. at 7th and Magnolia moved, by the Southern or by the K. & I., where it is going to the K. & I. Stock Yards for instance?

A. It may be K. & I. down at 7th and Magnolia. If there is anything for the Central Stock Yards they might throw it out on the long siding, that is at the L. S. Junction, but the Southern engines take it out to the Central Yards.

7. Have you made up a record of interchange of traffic at 7th and Magnolia, between the Louisville & Nashville and the Southern Railway Co., of live stock traffic delivered by the Louisville & Nashville to the Southern, at 7th and Magnolia Streets, the date of the delivery, and the initials of the cars, and number of the cars, contents of the cars, and the date when returned and date when moved?

A. Yes sir.

8. I exhibit to you what purports to be such a statement,
802 and will ask you to state whether or not that is correctly made from the records at the various times, and correctly giving the data which is before mentioned, as to the movement of the traffic interchanged between the two roads, as shown by the records?

A. Yes sir.

9. I wish you would explain this statement, and state what the first column indicates?

A. The date of delivery from the L. & N.

10. What does the second column show?

A. Time received.

11. What does the third column show?

A. The initial of the car.

12. What does the fourth column show?

A. The number of the car.

13. What does the fifth column show?

A. Contents.

14. What does the sixth column show in connection with the seventh?

A. The date of return, the time returned by the Southern Railway for the L. & N.

15. What does the last column show as the date or time is marked thereon?

A. The time the L. & N. pulled the cars away from 7th and
803 Magnolia.

16. I observe in the statement that on the extreme right

thereof, in the last column are the letters, "E" and "L," I wish you would state what they indicate?

A. "E" for empty, and "L" for loaded.

17. I call your attention to the fourth car named in the list just filed, and will ask you to read therefrom and indicate when that car was received?

A. Received from the L. & N. on November 28th, 1901, at 11:50 P. M., L. & N. car 19076, loaded, returned by Southern 11/29, 12:20 A. M., and moved by L. & N. 11/29, 1:50 P. M.

18. I will ask you to state whether or not the statement so filed by you shows as to each car, how long the same remained on the siding at 7th and Magnolia before it was removed by the Louisville & Nashville?

A. Yes, sir; it shows the time delivered and the time removed.

19. The difference between the two will show the time it remained there?

A. Yes sir; show the laid time at 7th and Magnolia.

20. I will ask you to file this and make it a part of your deposition, marked Exhibit Billington No. 1?

A. I do so.

21. I will ask you to state whether or not you have made up
804 by the records kept by the K. & I. as you have stated, of interchange traffic between the Southern Railway Co. and the Louisville & Nashville, all Southern Railway cars that were delivered to 7th and Magnolia Streets, the destination of which was the Bourbon Stock Yard, and if in that statement you show the same information as contained in the previous statement of which you have testified?

A. No sir; I show the date, time delivered to the L. & N., initial, number, contents, and time and date returned, and state whether empty or loaded.

22. I will ask you to state whether or not that statement is correctly made from the records as kept of the interchange traffic, and made by you from the said record?

A. Yes sir.

23. I will ask you to file that statement as part of your deposition, and mark it Billington No. 2?

A. I do so.

Cross-examination by Mr. BRUCE:

24. The heading of your statement which has been marked Billington No. 1 is as follows: "Kentucky & Indiana Bridge & R. R. Co. statement of L. & N. system of cars delivered K. & I. B. R. R. Co. for Central Stock Yards and returned to K. & I. for L. & N., showing time received, time returned and time L. & N.
805 moved cars." From what record do I understand this statement was taken?

A. From the K. & I. Bridge & Railroad records at the 7th and Magnolia interchange.

25. Who kept that record?

A. The yard clerk.

26. Who was the yard clerk?

A. They have had three or four of them there since the beginning of that statement in November 1901.

27. Who were they?

A. I could not say. I know three of them.

28. What have you been during that time?

A. During that time?

29. Since November 5th, 1901?

A. Since November 5th, 1901, I have been working for the Southern Railway, up to the 23rd of January, 1903, and then for the K. & I. Bridge Co. from the 24th of January, 1903, to yesterday.

30. Then you worked for the Southern Railway during all of the period covered by this statement?

A. Yes sir.

31. Except the period sometime in 1903, to yesterday?

A. Yes sir.

32. You were not working for the K. & I. Bridge Co. then until January, 1903?

806 A. Yes sir; I worked for them before I was working for the Southern.

33. That was before November, 1901?

A. Yes sir.

34. Then who were the clerks and employés of the K. & I. Bridge Co. that kept that record from which you say this statement was taken?

A. Do you want the yard clerks at 7th and Magnolia?

35. I want the names of the clerks that kept this record of which you say you have filed a copy as "Billington No. 1."

A. I can tell you, George Schuler, M. Callahan and O. F. Miller at 7th and Magnolia.

36. You did not keep the record from which this statement was taken?

A. No sir.

37. How did you get that record to make this statement from?

A. I was in the employ of the K. & I. Bridge Co., and I was told to go to 7th and Magnolia, that there was some clerical work there, that Mr. Callahan would show me what was to be done. I went to 7th and Magnolia, introduced myself, asked him what it was and he told me, and I sat down and started the report, and made the report up.

38. Who was it sent you out there to do that work?

807 A. Mr. T. H. Hayden trainmaster of the K. & I.

39. Where is that record kept from which you say this statement was made?

A. At 7th and Magnolia.

40. Then you don't know anything about the facts which this paper purports to show, or you don't know anything about the record from which you say this statement was made, except that you simply took a record out there that was shown you by Mr. Callahan and made a statement from it; that is all you know about it?

A. I know a record kept by a railroad is mighty near always a good record of the cars, and especially at an interchange point.

41. In your first column on this statement, and in case of the first car for example, you have the date November 5th, 1901, and then in the second column you have, "Time received 1:02 P."

A. That means P. M., in the afternoon, after 12 o'clock M.

42. What was received at 1:02 P. M.?

A. The L. & N. system car, I did not catch the number there.

43. Where was it received?

A. 7th and Magnolia.

44. Whereabouts at 7th and Magnolia?

A. There is only one place there, that is on the K. & I. delivery track, the K. & I. siding.

45. At what point on that siding?

808 A. It is hard to tell, according to how far they shove the cars.

46. Who received it there at that time?

A. I could not tell you.

47. You don't know anything about that?

A. No sir. I could if I looked at the writing, I might tell.

48. What writing?

A. In the record book.

49. Then in your sixth and seventh columns on this statement you have date and time returned for this same car, November 5th, 1901, 3:30 P. M. That is the time that car was returned at what point?

A. At 7th and Magnolia for delivery home to the L. & N.

50. At what place was it returned at 7th and Magnolia, what part of the track and what track?

A. At the L. & N. delivery track at 7th and Magnolia.

51. At what place on that track, at what part of the track?

A. I could not tell you that. I was not there when the car was delivered, but there is a track there that they receive cars on, and a car is shoved in there to clear the switch, or to clear the main line, that car is placed to be delivered to the L. & N., and if the L. & N. shove a car in on the K. & I. delivery track it is delivered to the K. & I.

809 52. In other words, your understanding of the matter is that when a car was shoved on to the western end of that siding, far enough on to the side to clear the main track of the K. & I., it was delivered?

A. Not the west end, it don't make any difference which end you shove it on so it is on there.

53. Therefore according to your idea, if a car was shoved on to the west end of that siding just far enough to clear the main track of the K. & I., that was a delivery to the L. & N.?

A. Yes sir. It don't make any difference which end it was delivered on just so it was delivered on the siding that they deliver cars to the L. & N. on.

54. You don't personally know anything about the place at which the several deliveries were made?

A. I know the interchange at 7th and Magnolia, yes sir; I am familiar with the place.

55. But with reference to the cars that are mentioned in this statement, you don't know anything about the place at which delivery was supposed to be made?

A. I know where the deliveries are made. They are all made at the same place, at the same siding.

56. You were not representing the K. & I. Bridge Co. at the time these occur-ences took place which are shown in this statement, were you?

810 A. No sir.

57. You were not located at 7th and Magnolia during that time, were you?

A. No sir.

58. From what record did you make up this statement that you filed as Billington No. 2?

A. The K. & I. interchange record at 7th and Magnolia.

59. The same records from which you made that statement No. 1?

A. Yes sir.

60. Did you make any part of the record from which this statement No. 2 is taken?

A. No sir.

61. Who made that record?

A. The same yard clerks did, between the same dates.

62. The same yard clerk that made statement No. 1?

A. Yes sir.

63. Did you make up that statement No. 2 under the same circumstances that you made the statement No. 1?

A. No sir.

64. What was the difference?

A. Well, I made date and time of delivery to the L. & N. initial, number of car, contents, and date and time of return, and

811 stating whether loaded or empty.

65. How did you come to make this statement No. 2, who asked you to make it?

A. The K. & I. Bridge & Railroad Co.

66. The same party that asked you to make statement No. 1?

A. That sent me out there, yes sir.

67. You just simply went out there and made up this statement from a record that somebody out there pointed out to you as the record from which to make the statement?

A. That somebody else kept, I made the statement from a record that somebody else kept.

68. Do you know whether or not there are two different records kept out there at that office showing different dates of delivery or receipts?

A. I do not quite understand you. Do you mean whether the L. & N. kept a record, and the K. & I.?

69. Does the Louisville Southern keep any record out there?

A. No sir.

70. Does the K. & I. keep any record by which they may show two times of delivery for the same car?

A. Yes sir.

71. What is the shape of that record, how does it show that?

A. Cars delivered there for siding, say a through car for
812 the L. & N., that car might have some defects according to the M. C. B. rules it could not move over the line unless repaired. That car would be sent back to the K. & I. Bridge Co. for repairs, and when they send a car back they mark outside of the car "S" for set back. Then the car might show coming back the next day right afterwards.

72. Then that statement would show when the car was first received by the K. & I. Bridge Co. to be delivered to the L. & N., and then show when it was delivered to the L. & N., what day?

A. No sir; it would show only when it was delivered to the L. & N. by the K. & I. Bridge Co. unless you went to Youngtown and got their interchange reports there, it might tell the time it was received from the Southern and delivered to the K. & I., the car coming in off the road, either the Southern St. Louis Division or the Louisville Division, if it is a through car for any connections it is in the possession of the Southern Railway until it reaches the connecting line. It is not in the possession of the K. & I. Bridge & Railway at all.

73. Suppose a car is to be delivered to the Louisville & Nashville Railroad Co. at 7th and Magnolia; is it delivered by the Southern Railway, or is it delivered by the K. & I. Bridge Co.?

A. By both. The Southern Railway have an arrangement that they can deliver cars at 7th and Magnolia, and the K. & I. have an arrangement that they can deliver at 7th and Magnolia.

813 74. This statement you have filed here, referring now to "Billington No. 1," seems to cover solely L. & N. cars delivered to the K. & I. Bridge & Railroad Company, and then returned to the K. & I. Bridge & Railroad Co. for the L. & N. The Southern does not seem to figure in the statement at all?

A. Yes sir; I have their cars received from the L. & N. by the K. & I. Bridge & Railroad Co. for the Central Stock Yards, and returned by the K. & I. Bridge & Railroad Co. for the L. & N.

75. Does the K. & I. Bridge & Railway Co. carry cars of freight from 7th and Magnolia to the Central Stock Yards?

A. No sir.

76. Where does it carry them to?

A. It might not pull them away from the 7th and Magnolia at all, the Southern engine might get them there. When cars are delivered at 7th and Magnolia they are delivered to the K. & I., whether the K. & I. or Southern engines move them.

77. Then you speak of cars being returned to the K. & I., who returns them?

A. The Southern will return them.

78. To the K. & I.?

A. Always, yes sir.

Redirect examination by Mr. DODD:

79. I don't know whether I asked the question at first or not, who keeps the record for the Southern Railway Co. showing
814 the interchange of its cars with the L. & N. at 7th and Magnolia, what corporation keeps it?

A. The Kentucky & Indiana Bridge & Railroad Co.

80. You said in response to a question of Mr. Bruce that you were sent out there to see Mr. Callahan who would instruct you what you were to do in the nature of clerical work?

A. Yes sir.

81. Was he the same Mr. Callahan who kept the original record of which you made a copy, or kept it in part?

A. Yes sir; he kept it in part.

82. Are they the official records kept there to show the interchange from day to day?

A. Yes sir.

83. Were you enabled to recognize them from inspection, examination of them as the official records kept?

A. As the original records?

84. Yes.

A. Yes sir.

85. You have also been asked about where a delivery was made. I wish to ask whether or not the entry made in the official record is made always by the man who makes a record of the time of delivery or return, or by a clerk in the office?

815 A. By the man who received the car. They only have two clerks, that is one day clerk and a night clerk, out there. A car is delivered at 4 P. M., then it may not be moved until 6:30, and the night man puts the time moved by the L. & N. or the K. & I.

85. He would make all the records for the time he was there?

A. Yes sir.

86. Where does he get his original data from which he makes the record? Does he get that from the direct inspection of the car or track, or is it reported to him by the operator of the train that makes the delivery?

A. He checks the cars, checks them himself and makes the record, and has bills for these cars if they are loaded cars, and takes the destination and contents off of them.

816 J. A. ASHCRAFT, JR., called for the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. DODD:

1. What is your name, age, residence and occupation?

A. A. J. Ashcraft, Jr.; 28 years; 2520 Park Place, and am Secretary and Treasurer for the Central Stock Yards Co., and agent for the Southern Railway at Central Stock Yards Station, Kentucky.

2. How long have you been the agent of the Southern Railway Co. at Central Stock Yards, Ky.?

A. Since November 1st, 1901.

3. Have you been the agent of the Southern Railway Co. at that point since the opening of that station?

A. Yes sir.

4. Are you still the agent of the Southern Railway Co. at that station?

A. Yes sir.

5. I will ask you to state whether or not at any time since you have been agent of the Southern Railway Co. there you have ever had any request made of you through any of the agents or employés of the L. & N. Railroad Co., to hold at the yards of the Central Stock Yards, and at the station on the Southern road at which you are agent, the cars of the Louisville & Nashville Railroad Co. for loading purposes, if so, what are the facts in that regard?

817 A. I was told by a man over the 'phone at Mr. Dempf's office, who gave his name as Digman, early in 1902, to hold cars at Central Stock Yards for loading back to the L. & N., when these cars had to come to Central Stock Yards either loaded or empty.

6. Have those orders coming to you, or requests, as mentioned, ever been countermanded by the Louisville & Nashville Railroad Co. in any way?

A. No sir.

7. I will ask you to state whether or not there is any inhibition by the Southern Railway Company against the use of the cars of the Louisville & Nashville Railroad Co. for live stock leaving Central Yards to go over the Louisville & Nashville Railroad Co. to some other point, after the stock is sold, whether or not there is an open door policy as to all railroads there, or whether the Southern demands it shall be moved over its road where it is possible to do it?

A. No sir.

8. What right has the Louisville & Nashville Railroad Co. to the traffic moving from that point eastward as compared to the rights of any other road?

A. They have the same rights.

9. Have they received traffic from the Central Stock Yards that was delivered to them and moved over their lines?

818 A. Yes sir.

10. What has been the policy of the Louisville & Nashville Railroad with respect to the procurement of that traffic, meaning by that if they solicited it, or has such as they have had been voluntary on the part of the shippers, how has that been?

A. The greater part of it has been voluntary on the part of the shippers. The L. & N. has done very little soliciting at the yard. The only time an L. & N. has come there to me for any business was this morning just before I left the office to come up here, a young man who was commercial agent of the Cumberland Gap Despatch, Mr. Campbell by name, came to me and requested that any Virginia business we had out of the yard be routed L. & N. out of here in care Cumberland Gap Despatch. I told him we did no routing in the office there ourselves, that we left that entirely

with the shippers and railroad companies, and I furthermore told him if any business should show up I would let him know of it and give him a chance for it.

11. Have you ever at any time had requests from shippers to send live stock from the Central Yards over the Louisville & Nashville and were unable to do — for the reason of not being able to get cars?

A. Yes sir.

12. Has that occurred?

A. Yes sir.

819 Cross-examination by Mr. BRUCE:

13. Have you testified before in this case?

A. No sir.

14. Did you testify in the matter before the Interstate Commerce Commission?

A. No sir.

15. Who was the party that I understand you say called up by telephone and asked you to hold L. & N. cars?

A. I cannot say whether they called me up or not. There was a man in Mr. Demph's office at 9th and Broadway that handles the car orders, Mr. Dignan, and in talking with him over the 'phone at one time to order cars, he told me to hold L. & N. cars at the yards for loading.

16. When was that?

A. That was early in 1902, I could not say exactly the date.

17. Do you mean to say he gave you general instructions applying indefinitely in the future, to hold L. & N. cars there?

A. He placed no restriction on it.

18. How did he come to say anything of that kind, what was the occasion for it?

A. To handle business more readily, and save the work of switch engines.

19. Save the work of whose switch engines?

A. Both K. & I., Southern and L. & N. I suppose he had
820 reference only to L. & N. engines.

20. How did it save work of L. & N. engines?

A. Well, if a car loaded would come to our yards, say this morning, we would empty the car and have it returned to the L. & N. If this afternoon after the sales were over a man comes and gives me instructions for loading out over the L. & N., it would necessitate my ordering an empty from the L. & N. to handle that stock.

21. Did he say anything to you about how long you should hold L. & N. cars for that purpose?

A. No sir.

22. Did you understand that from him then, if you got an L. & N. car that you were just to hold it indefinitely till you got something to go back to the L. & N.?

A. I did not understand anything from him by his instructions, I was to use my judgment in the matter.

23. Did he tell you that?

A. He did not tell me that no, but I would not hold a car hanging around the siding too long, it would be in the way.

24. When did you stop doing that?

A. It was after the hearing before the Interstate Commerce Commission, when I understood the question had been brought up and objected to.

821 25. Immediately then after the hearing before the Interstate Commerce Commission you understood that question had been raised about the delay in returing L. & N. cars?

A. To the L. & N. Railroad Co., yes sir.

26. And since that time you have endeavored to be more prompt about returning cars?

A. Yes sir.

27. How can you locate the time when you had that conversation?

A. It would be very hard to locate from the simple fact that about that time I was talking to Mr. Dignan I reckon probably three or four times a week, very often. It would be very hard to say exactly what day.

28. That is why I ask you how you can locate it as in January, 1902?

A. I did not say January.

29. Excuse me, what did you say?

A. I said early on 1902.

30. When was it?

A. I would say it was in the first two or three months probably of the year, I could not say definitely.

31. January, February or March?

A. In there somewhere, yes sir.

32. What is Mr. Dignan's position?

A. I understood car clerk in Mr. Dempf's office.

822 33. Who is Mr. Dempf?

A. Agent of the L. & N. Railroad at 9th and Broadway.

34. What are the duties of the car clerk?

A. Handling car orders.

35. What do you mean by handling car orders?

A. For instance an industry located on the L. & N. would want an empty to load out; the order would be placed through Mr. Dignan, rather through Mr. Dempf, and Mr. Dingan acting as a clerk in Mr. Dempf's office, Mr. Dingan would then supply the car from the most convenient place.

823 STATE OF KENTUCKY, *Jefferson County, ss:*

I, Alonzo Walker, the Official Stenographer of the Jefferson Circuit Court, Chancery Branch, First Division, certify that the foregoing depositions of R. C. Watkins, J. W. McCampbell, Charles Byrne, S. A. Stalcup, Edwin Fitzgerald, B. S. Josselyn, T. C. Powell, Thomas Welsh, H. B. Spencer, Bennett H. Young, A. Philbrick, E. A. Billington and J. A. Ashcraft were taken pursuant to agreement, and pursuant to an Order of Reference heretofore duly entered herein, before me, at the time and place and in the action mentioned in the caption; that said witnesses were first duly sworn by me that

the evidence they should give in said action should be the truth, the whole truth, and nothing but the truth; that said depositions were first taken in short-hand by me, and a full, true and accurate transcript of same afterwards made by me; that the reading of the depositions to the witnesses and their signatures to same were waived by counsel; that Mr. J. C. Dodd and Mr. W. M. Smith appeared for the plaintiff, Mr. James P. Helm, Mr. Helm Bruce and Mr. Thomas B. Harrison appearing for the defendant.

Witness my hand this 1st day of April, 1903.

ALONZO WALKER,
Official Stenographer.

Attest:
SHACKELFORD MILLER, *Judge.*

824 Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Notice to Take Depositions.

To the Louisville & Nashville Railroad Company, or Helm, Bruce & Helm, its attorneys of record in the above entitled cause:

You are hereby notified that on the 4th day of February, 1903, at the law office of Dodd & Dodd, Rooms, 40, 41, and 42, Louisville Trust Company Building, in the City of Louisville, County of Jefferson and State of Kentucky, between the hours of 3 o'clock P. M. and 6 o'clock P. M., of said date the plaintiff will proceed to take the depositions of R. C. Watkins and sundry witnesses to be read as evidence in behalf of the plaintiff on the trial of the above entitled cause, and that the taking of the same will, if necessary, be continued from day to day, Sundays excepted, until finished.

Dated this the 4th day of February, 1903.

J. C. DODD,
W. M. SMITH,
Attorneys for Plaintiff.

825 & 826 We acknowledge service of the above notice this the 4th day of February, 1903.

...ELM BRUCE,
——— ———,
Attorneys for the Defendant.

827 Jefferson Circuit Court, Chancery Branch, First Division

#2. No. 30269.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

The Depositions of Milton H. Smith, C. O. Bradford, William J Dickinson, Mark H. Gabhart, and Thomas P. Dignan, for Defendant.

April 2, 1903
Depos. for Defendant
Rec'd of Alonzo Walker Off. Stenog. Before whom taken and filed,
Attest:
JNO. H. PAGE, *Clerk*,
By P. K. ALTENBUSH, *D. C.*

Filed May 30 1904.
J. MORGAN CHINN, *Clk.*

828 Jefferson Circuit Court, Chancery Branch, First Division.

No. 30269.

CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

The testimony in this case coming on to be taken before me on the 3rd day of March, 1903, at the office of the Louisville & Nashville Railroad Company, 2nd and Main Streets, in Louisville, Ky., pursuant to an order of reference heretofore duly entered herein, the defendant began the introduction of its testimony as follows:

MILTON H. SMITH, called in behalf of the defendant, being
829 duly sworn and examined by Mr. Bruce, testified as follows:

1. You I believe are Milton H. Smith, President of the Louisville & Nashville Railroad Co., are you not?
A. Yes sir.
2. How long have you been in the railroad business?
A. Since January, 1860.
3. Has your attention been directed to the practical operation of railroads as a carrier of freight and passengers, or have you been engaged simply in the financial part of the railroad business?
A. I have been engaged in the practical operation during the whole time.

4. Have you ever acted as freight agent or traffic manager or anything of that kind?

A. Yes sir; I have been local freight agent of the Louisville & Nashville Railroad in the City of Louisville for several years.

5. Please state what is the practice or custom of railroad companies in the matter of interchanging cars with each other, as to whether railroad companies concede the right of a shipper or
830 of a connecting carrier to demand an interchange of cars, or whether there is discretion exercised in this matter by the owner of the cars?

A. The Louisville & Nashville Railroad Company and all other rail transportation lines have always reserved the right and are reserving the right to control the equipment belonging to the various companies. The management of all rail transportation lines reserve the right to say whether the equipment shall leave their own lines and go on to others or not. It is a matter of arrangement and agreement. Whenever the management deems it for the interest of the company that the equipment or any part of the equipment shall not leave its own lines, they so arrange. Not only that, but each management reserves the right to refuse to receive cars of connecting lines whenever they deem it for the interests they represent to do so. That so far as I know is the invariable rule and practice.

6. Does or not the Louisville & Nashville Railroad Co. ex-
831 ercise any particular care, or even undergo expense on occasions in order to keep its own cars on its own lines? Does it, for example, ever pay the cost of unloading from its cars and into other cars, or the cost of storage at intersecting points with other roads?

A. In carrying out the determination of the management to control the movement of the equipment of any particular corporation, or the management of the Louisville & Nashville Railroad Co. the movement of the equipment of that company, it exercises discretion as to whether it will or will not permit its cars to go on to connecting roads. Under certain conditions of traffic this becomes an necessity; that is, it becomes necessary to refuse to let the L. & N. cars leave the L. & N. tracks. Such conditions have existed for several years past, and now exist, which are the result of congested conditions, the freight traffic being moved and offered for movement throughout the country, or a very large part of it, is at the present time and for a long time past has been largely in excess of facilities.

The Louisville & Nashville Railroad Co. originates, or there
832 originates on its lines a much larger tonnage for points on connecting lines north of the Ohio River than originates on such lines for points on the L. & N. road. The result is a movement of empty cars south bound. The traffic of connecting lines north of the Ohio River being largely in excess of facilities, such lines have had to refuse to give the L. & N. Railroad an empty car in exchange for a loaded one, or an exchange of car for car, or refuse to furnish the L. & N. Railroad an empty car into which to transfer the load. Should the L. & N. Railroad Co. permit its cars

under existing circumstances, to go on to connecting roads for the purpose of taking the traffic to destination, its line would soon be stripped and it would be unable to perform its duties as a common carrier between points on its own lines. This forces the management to place the property in store or unload it. Certain classes of freight, like pig iron, can and is being unloaded. You will find in the yards of the L. & N. Railroad in East Louisville now pig iron
833 lying upon the ground that has been thrown out of cars waiting until a car can be secured from a connecting line to move it to destination. The same is true at Covington, and Newport, Ky. As this does not give relief, the L. & N. Railroad Co. is compelled to refuse to receive certain classes of property destined to points on connecting lines. This is especially true at the present time of pig iron, steel billets, lumber and some other commodities. The same conditions exist to a certain extent on south bound traffic, especially traffic destined to points on connecting lines beyond Atlanta and Montgomery. The L. & N. company is compelled to refuse to receive certain classes of traffic for points on those lines, because such lines are unable to furnish their quota of cars. To overcome this condition of affairs the L. & N. has largely increased its equipment for the purpose of supplying the deficiency, especially in the southern territory where its patrons, manufacturers, &c., have valuable business. It has overcome the difficulty to some extent, as is shown in monthly statements between the L. & N. road and such connections, which has for years probably without the exception of a single month, shown that in adjusting the interchange car account
834 the L. & N. Railroad Co. has received large balances in its favor, showing that the mileage made of L. & N. cars on such connections is largely in excess of the mileage of cars of those roads on the L. & N. road. This applies especially to the Southern Railway, the Seaboard Air Line Railroad, the Atlantic Coast Railway, and Central Railroad of Georgia. Notwithstanding this, the L. & N. is unable to furnish sufficient equipment to accommodate all its patrons, and as stated before, is still compelled to refuse to receive certain traffic on some of its southern connections. Any attempt on the part of the L. & N. Railroad Co. to supply equipment for the whole United States, Canada and Mexico, would of course be futile. Anything that we could do would not amount to a drop in a bucket of water. I believe the railroads in the United States own about a million and a half of cars. The L. & N. has about 26,000. If we had 100,000 it would not enable it to furnish at the present time for all traffic moving from points on the L. & N. Road to points on its connections.

835 7. Does the L. & N. ever store freight at the end of its line where it connects with other lines and pay the cost of storage in order to save its cars and keep them on its own track?

Objected to by counsel for plaintiff as not being relevant to any issue in this case.

A. Yes, sir; I have heard stated that the L. & N. stores some property. Sometimes in order to make delivery it unloads property from

cars, puts it on drays and sends it to the local stations of connecting roads, in order to force them in that way to receive the property, the L. & N. Road paying the drayage. As I have already stated, the L. & N. has at the present moment, pig iron lying on the ground in East Louisville, Covington, and Newport, which at its expense it has unloaded on the ground, as that is property that will not be injured by exposure. When it can get cars from connecting roads in which to load it, the company will have to bear the expense of reloading that pig iron to ship out.

8. Now as to live stock cars in particular, does the Louis-
836 ville & Nashville Railroad make any effort to keep its own live stock cars on its own rails?

A. The rules and regulations governing the interchange are varied according to conditions. Box cars are much more universally interchanged than other classes of cars. What we call coal cars or gondolas are especially retained on our lines. As a rule we do not permit that class of cars to go on to connecting lines north of the river at Cincinnati, or Louisville, or Evansville. The same is true of stock cars. Our stock cars we try to keep on our own line and we do not usually let them go off the line except on some special arrangement or under special condition. It is a matter that is left to the discretion of the management, and in which the management exercises, and necessarily exercises discretion.

9. Take for instance live stock coming to Louisville and destined for Chicago, Indianapolis, or going to Cincinnati destined on east, what is the general rule of the company as to its treatment of such stock and cars?

837 A. Live stock coming off of the L. & N. Road going, you say, to Indianapolis?

10. Yes, anywhere north of the river?

A. I think it is almost universally transferred at this point; live stock, you say, going to Cincinnati?

11. Yes, coming from the L. & N., going to Cincinnati, and being destined for points north or east of Cincinnati?

A. Much of the larger proportion of the live stock shipped over the L. & N. Railroad from Louisville destined to points beyond Cincinnati is moved in foreign cars, probably ninety-five per cent. of it. That, however, is a matter of statistics. Under certain circumstances, by agreement, the L. & N. cars are sometimes allowed to go as far as Pittsburg or East Liberty the live stock station of the Pennsylvania Railroad near Pittsburg.

12. Is that or not a matter of agreement between the Pennsylvania Railroad and the L. & N.?

838 A. A matter of agreement from time to time, yes, sir.

13. When it comes to the case of terminals and of freight which has reached the City of its destination, does the rule change as to the discretion which the owner of cars has, concerning the interchange of those cars with connecting lines, or not?

A. It does not; discretion is still exercised, not only by the L. & N. Railroad but by all other roads. It is a question whether the management thinks their interests would be promoted by permitting

the cars to go on to connecting lines. A good illustration of that is an experience of the L. & N. Railroad a little more than a year ago, the L. & N. being short of coal for its own use, purchased from the Central Coal & Iron Co. and entered into a contract with the Central Coal & Iron Co. mining coal on the Illinois Central Railroad Co. to deliver a certain number of cars of coal per day for a certain period, the Illinois Central stipulating that the cars must not be sent
839 out of Louisville; in other words, we were not to be permitted to take them to Lebanon Junction, the object being of course to secure prompt return. This year we tried to make the same contract and the Illinois Central refused to move the coal unless the L. & N. Railroad Company would furnish the cars. It is all a matter of agreement and matter of convenience from time to time. If the Illinois Central had had plenty of cars to move their traffic, they would have been very glad to furnish the cars to move the coal for us. If it had been a time when they had a surplus of cars they would not have objected to their going to Lebanon Junction. It all depends on times and conditions. We at times refused to permit cars to be loaded to be moved between points on our own lines in cities. In Birmingham, Alabama, at the present time there is a very congested condition of affairs. We are threatened with a blockade which may result in disastrous, chaotic conditions. Our facilities are greatly overtaxed, and we have refused to permit our cars to be loaded, for instance at the Fertilizer factory to be shipped
840 to some other point in the city for delivery on our own tracks, because it can be hauled by animal power between those points. We *we* permit a car to be loaded in that way we have to switch the car to the place to be loaded, then it has to be switched to the point to be unloaded, which may occupy three or four or five days' time, and such movements tend to choke up or blockade the yards, and reduce our capacity to move cars between distant points on the line, reduce our capacity to serve our patrons who are necessarily compelled to ship over the road; in other words if we do not move the traffic it may not be moved at all.

14. Take the matter of the coal trade for instance, has the Louisville & Nashville Railroad coal properties to any extent situated along its lines? I do not mean to ask *when* the L. & N. own coal properties, but whether there are coal properties to any extent situated along the line of the Louisville & Nashville Railroad?

A. There are a great number of companies operating coal mines on the L. & N. Road, but at present time we refuse to permit our cars to load at the mines destined for points on connecting
841 lines in the City of Louisville, because it results in detention. We refuse to allow them to go to New Albany or Jeffersonville, or points on the Pennsylvania lines, except where we are under contract for a long term made some time ago. The reason is that we are unable to furnish cars for all of the coal to be loaded to be shipped to points on our own lines, and we think it is our first duty to serve our own patrons wholly dependent upon us. Those located on other lines situated in Louisville probably can get coal from other sources, at any rate we do not feel under the same obligation to look

after patrons of other roads that we do to look after the patrons of our own.

15. Is there any difference in ordinary parlance in business circles, especially in transportation circles, between the terms "railroad company" and "transfer company," of so, what is the difference?

A. A marked difference. A railroad company, in the usual meaning of the term is a corporation created to transport property between different points in a country. A so-called transfer com-
842 pany is one organized to do a switching business between perhaps two or more railroad companies. There are a number, I believe, of so-called belt or transfer railroad companies in some parts of the country, usually at points where there is a congested condition of traffic, like Indianapolis, and Chicago, or between St. Louis and East St. Louis. So far as I know there are no such companies in the larger eastern cities, but a transfer company is one simply organized to do what we call a switching business.

16. Is the Louisville & Nashville Railroad Co. a transfer company?

A. It is not.

17. Then, for what purpose did it acquire these various tracks within the City of Louisville called ordinarily terminal tracks?

A. The so-called terminals of the Louisville & Nashville Railroad Co. in the City of Lousiville and at other points, were created for the purpose of promoting and facilitating traffic between points
843 on and reached by its lines as a common carrier; to facilitate the convenience of patrons and to facilitate receiving and delivering of traffic, and in that may create traffic, for the purpose of the revenue that would be derived by transporting it over its lines.

18. How does that operate to attract business to a railroad company?

A. The creation of convenient terminal facilities is a part of the general scheme of furnishing facilities for transporting property between distant points. If you do not have a place to receive and care for property, you could not handle it with celerity or satisfaction, and it would tend to discourage business. In my experience the facilities of the L. & N. Railroad Co. in the City of Louisville have been wholly inadequate for the traffic offered. I should perhaps say that that was in part due to the inadequacy of the equipment and facilities for moving the traffic, which used to result in what we call blockades, and force the L. & N. Railroad Co. to refuse to receive freight for certain points reached by its lines, sometimes for
844 ten days, sometimes for two weeks, sometimes for two days. It would be open to receive traffic on a day and sometimes be blockaded before. Of course that was some years ago and due in part to lack of equipment sufficient to move the traffic, and largely due to the fact that connecting lines were unable to receive traffic from it. Many of the facilities are constructed for the convenience of manufacturers who are creating a large tonnage, in order to avoid the expense of drayage to and from regular stations. It applies mainly to those who do business in what we call car load lots altogether.

19. If a party has an industry located on the terminal track of the

Louisville & Nashville Railroad Company with which he has side track connections, is he or not apt to do his shipping over the rails of the Louisville & Nashville Railroad?

A. A manufacturer located on the tracks of the L. & N. Railroad in the City of Louisville with side track facilities, doing business in car load quantities, would naturally be inclined to give the Louisville & Nashville Railroad Co. the preference, but the management of the Louisville & Nashville Railroad Co. have exercised its
845 discretion by refusing to switch to and from such manufacturers and points of interchange with other lines in the City of Louisville on competitive traffic. In other words, so far as it has the power, it requires such shippers to forward their competitive traffic, traffic to competitive points, by the L. & N. Road. It treats the business somewhat as a partnership, not a legal partnership but as in effect; it does what it can to promote the business of such patrons, and it encourages and tries to induce such patrons to do what they can to promote the interests of the L. & N. Railroad Co.

20. If the Louisville & Nashville Railroad Co. can be compelled to switch cars from industries on its terminals to connections with other roads, or from the connections with other roads to industries on its terminals, what would be the effect of that?

—. The effect of such practice would be to deprive the L. & N. Railroad Co. of revenue it is legitimately entitled to in transporting property from points on its terminals to points on and
846 reached by its lines, its terminals being created for the purpose of creating and promoting traffic between such terminals and such points on and reached by its lines. The result would therefore be as I say a deprivation of a large revenue to which it is legitimately entitled; and in addition it would be compelled to do the switching business for a nominal consideration, for a consideration that is very much less than the cost of the service. It will readily be seen that with the terminals of the Louisville & Nashville Railroad Co., if it only received the switching charge of one or two dollars per car for the service of moving cars between points on such terminals and points of interchange with connecting lines in the City of Louisville, the revenue derived would be but a very small part of the interest on the cost of the property, and the cost of maintenance and operation. It would therefore render a service for practically nothing, and at the same time deprive the L. & N. Railroad Co. of a large amount of revenue which it is legitimately entitled to, and for
847 which purpose such facilities were created.

21. In fixing the switching charges which have prevailed from time to time of $1.00, $2.00, or $3.00 per car as it might be, have those charges been fixed with a view of arriving at an amount that would cover the cost of the service and a fair profit on it considered as an independent service, or with what other consideration?

A. The nomical charge of one or two dollars per car is not fixed as being a compensation, but for the purpose of encouraging and creating traffic. As an illustration, the Ballard & Ballard Mills are located on the tracks of the L. & N. Railroad. That corporation receives a very large amount of grain from other points, reaching

Louisville by lines other than the L. & N. road. The L. & N. Railroad switches the cars to the mill for $1. per car. It relies for its compensation upon the traffic created, the flour made from the grain and shipped to points on and reached by the L. & N. road.

848 22. If the Louisville & Nashville Railroad Co. were required to do a general transfer business in the City of Louisville for anybody that might demand it, what would be the effect as to the use of its equipment or the adequacy of its equipment for the performance of such services; and what would be the effect upon its service in receiving and delivering freight that is going over its own lines or is destined to go over its own lines outside of the city?

A. To the extent that it would be required to furnish L. & N. cars for such unre*num*erative service, it would reduce the capacity of the L. & N. railroad company to serve its regular patrons between more distant points on its line. The traffic here being now in excess of its facilities, to the extent that its employés and engines were occupied in performing this unre*num*erative service, it would tend to embarrass the general movement which is already badly congested, much more so perhaps in some other cities on its lines than in the City of Louisville. To the extent that the company's

849 capacity to serve its patrons between points on its own lines is reduced, its revenue would be reduced, but what is perhaps of more importance, its facilities to serve patrons entirely dependent upon it would be reduced, and such patrons to that extent embarrassed.

23. If the Louisville & Nashville Railroad Co. were required to switch and transfer on its terminals all freight coming to the city of Louisville from other lines, or going out of the City of Louisville over other lines than the L. & N. would or not that practically give to all these other lines the benefit of the terminals of the Louisville & Nashville Railroad Co.?

A. If the Louisville & Nashville Railroad Co. is required to receive loaded cars from all connections, loaded with property to be delivered to different industries, warehouses &c., on its lines in the City of Louisville, or required to receive cars loaded at such industries, warehouses &c. for delivery to points of interchange

850 with competing lines in the city of Louisville, for the nominal re*num*eration of $1. per car, the value of the terminals to the Louisville & Nashville Railroad Co. would be very greatly reduced, and the value of its main lines would be very materially reduced by the fact that a large amount of traffic could in that way be diverted from its lines to competing lines. The arrangement would be a most inequitable one. As an illustration, some years ago the Louisville Southern Railway having been completed from the city limits near 12th and Magnolia Avenue to Burgin, the point of connection with the Cincinnati Southern Road, and by those connections entered into a contract to transport a large amount of lumber from a point in Southern Georgia to be used in the Construction of a cotton mill on the L. & N. Road. To secure it, it contracted to transport it at a reduced rate, thus diverting the traffic

from the L. & N. Railroad and controlled lines, a distance of 474 miles. It brought the property to Louisville, using the *L.* & I. Bridge tracks, and undertook to deliver it to the Louisville &
851 Nashville to be switched to the site of the cotton mill for $1. per car, which the L. & N. refused to do. The terminals of the L. & N. Railroad Co. had cost more than the total cost of the Louisville Southern Railroad, yet in that way the Louisville & Nashville Railroad Co. was to be deprived of the benefits it expected to derive from the creation of such facilities and large expenditure made.

24. Suppose the Louisville & Nashville Railroad Co. were required to turn over its cars containing live stock to the Southern Railway for delivery at the Central Stock Yard instead of taking the cars and delivering them at the Bourbon Stock Yards which is the L. & N.'s own live stock depot, would there be any difference, any advantage or disadvantage to the Louisville & Nashville Railroad Co. on account of the persons by whom the inspection of the stock was made and by whom the stock was received at the two depots, one being the depot of the Louisville & Nashville Railroad Co. and the other the depot of the Southern Railway?

A. There would be this difference, the inspection in the case of delivery at the L. & N. live stock station would be made by
852 its own agents; and the inspection made at delivery at the Central Stock Yards would be made by agents of the Southern Railway, or some one representing, I suppose, the Southern Railway.

25. Would there be any difference therefore in the facility with which the Louisville & Nashville Railroad Co. could get at the truth of the condition of the stock when received?

A. There would be the difference that one inspection would be made by agents of the L. & N., and the other by agents of another corporation, in whose possession the damage to the stock, if any, might have been made. In other words it is possible that damage or injury to the stock might have occurred between the time the stock was delivered to the Southern Railway on the K. & I. Bridge tracks and the time of its reaching the Central Yards, and the agents of the Southern Railway would naturally try to protect their interests as far as they could.

26. What would be the effect upon a railroad company's business if it should be required at all points of physical connection
853 with connecting roads to interchange with such roads less than car load lots of freight?

A. What we usually mean by less than car load shipments apply largely to merchandise. To handle miscellaneous shipments it is necessary to provide convenient freight stations and necessary clerical and labor forces to receive, handle, load, unload, deliver, care for, examine condition etc.; and to handle such traffic at all points of interchange would necessitate the establishment of such a station and such organization, such facilities for handling the business. Much the better way of course would be to adhere to the present methods, and receive and deliver such property at the regular stations. If the

consignee wants such property delivered at other than regular stations it must be done and should be done by animal power, drays, transfer wagons and such.

27. While the delivery of such freight not at a regular depot of the carrying company in a city, but at the point of intersection with some other line might in that case be an advantage to
854 an individual shipper, consignor and consignee, what would the effect be on the general business as a whole in the matter of expedition, facilities, etc.?

A. To transact business in that way would be embarassing because it would render necessary the establishment of such a multiplicity of stations and organizations, and the expense would be excessive. It seems to me that is not a practical question. It is recognized that transportation lines have a right to designate their stations, where they will receive and deliver freight, and they have a right to say they will not do it at any other point. All they are required to do is to furnish reasonably convenient facilities for the transaction of business with patrons. It does not seem to be possible under any circumstances that they can be required to establish a point for receiving and delivering freight at any point that may be demanded by consignee or shipper. That is a matter that must be left to the discretion of the management of the roads, and patrons must rely upon railroad companies doing everything they can to promote traffic, and therefore they establish in large cities
855 two or more freight stations sometimes. It so happens that the L. & N. has I think, two or three freight stations for handling that class of traffic in the City of Louisville. The Illinois Central has two.

28. Would or not the interchange of such freight at various points of physical connection between lines in the City of Louisville for example, greatly delay the traffic as a whole?

A. It would not delay the traffic as a whole; it would only delay the traffic that would be received and delivered at such points, and such delay would result from the necessity of the cars in which such traffic might reach, say the City of Louisville, being sent to a regular freight station and there discharged and this miscellaneous freight, reloaded and switched back to this supposed point of interchange. Traffic as a whole would not be delayed except to the extent that this extra movement might embar-ass the general business by rendering the company unable to do the additional work
856 without delay to all of its business. If its facilities were such that it could perform this additional service without embar-assing other traffic, it would have no effect upon the general traffic.

29. A certain code of rules has been introduced in evidence in this case, called I believe, the Code of Per Diem Rules, that it seems a number of railroad companies have agreed to. Will you please state whether the purpose of those rules was to take away from railroad companies the discretion concerning which you have spoken, as to the interchange of cars with each other?

Objected to by counsel for plaintiff.

A. The Code of Rules to which you refer have no bearing whatever on the question of the right of each railroad company to control its own equipment. The Code of Rules referred to are simply the rules adopted for adjusting the renumeration which one company agrees to allow another company for the use of said company's cars, if it does use them. No railroad company that I know
857 of has ever agreed or has ever been required to permit its cars to go on connecting roads or demand of such connecting roads or anybody else. The reason of that is apparent. When a car on the L. & N. Railroad gets on to a connecting road, the Louisville & Nashville Railroad Company has no assurance it will ever see that car again. The car may go to the Pacific Ocean, or the government of Mexico, or Canada, and be kept moving around until it is worked out, and never get back on the L. & N. road, and the L. & N. Railroad Co. has no recourse whatever, except that if it can find such car has been destroyed or broken up, it can require the company on whose tracks the car was destroyed to pay for it, if the corporation is a solvent one. All that the L. & N. Railroad Co. can hope to receive from cars going on connecting roads is the agreed compensation for the use of the car, but as I said before the Code has nothing whatever to do with the question of the right of a railroad corporation to decide whether its equipment shall or shall not go beyond its own lines. It merely provides a basis for paying what you might
858 call a rental for the use of the car.

Cross-examination by Mr. DODD:

30. Much of the first part of your deposition about the interchange of cars as explained by you, has reference, does it not, to through traffic?

A. All cars interchanged with connecting lines is in connection with through traffic; that is what we mean by through traffic, traffic passing from one road to another road, that is usually the term.

31. Does not through traffic mean traffic that is transferred from the initial carrier for instance, to a connecting carrier, to be transported to some point on the connecting carrier's road, and by a joint bill of lading calling for the destination on the other road, or a through traffic arrangement beyond the terminals?

A. Yes sir; largely; it may or may not be governed by a through bill of lading, but usually is. The distinction between through traffic and local traffic as it is usually understood is that
859 through traffic is traffic passing between points located on two different roads, while local traffic is passing between two points on the same road. From Bowling Green to Louisville would be local; Nashville to Indianapolis would be called through traffic.

32. Where traffic originates on a line of railway destined to some industry or plant in the City of Louisville on the lines of the Louisville & Nashville Railroad Company, and is delivered to the Louisville & Nashville Railroad Co. at a point of physical connection between its tracks and the initial carriers, if at all, does it require any participation of the Louisville & Nashville Railroad Co. in the Louisville rate on that traffic to such industry?

A. Whether or not the Louisville & Nashville is to participate in the rate depends upon the agreement with which the rates are made. Take as an illustration the shipment of a car load of wheat from, say East St. Louis, via the Southern Railway to the mill of
860 Ballard & Ballard Co.; the competiton between the various lines causes them to absorb what we call the switching chatge in the rate; that is, they will make a rate of say four cents a hundred, which will include delivery to the mill. Out of that the L. & N. Railroad Co. receives $1. per car. The L. & N. does that because Ballard & Ballard manufacture that wheat into flour and ship it to points on the L. & N. or reached by the L. & N. Railroad. If that wheat was shipped from some competitive point of the L. & N. Railroad, the L. & N. Railroad would refuse to switch it for a dollar a car.

33. All the Louisville & Nashville Railroad Co. would get in that instance would be the switching charge, would it not?

A. It would get the switching charge, and transportation at tariff rates from Louisville to Atlanta or Montgomery, or wherever the flour is shipped.

34. You do not mean to say all the flour manufactured by Ballard & Ballard is sold at points on the lines of the Louisville & Nashville Railroad?

A. It is all sold to points upon or reached by the Louis-
861 ville & Nashville Railroad Co. except some competitive points, except what is sells in the city itself.

35. Then the purpose of the Louisville & Nashville Railroad Co. is using this discretion as it has done and as explained by you is entirely a selfish one?

A. Thoroughly, a matter of business.

36. Entirely selfish and without disregard to the public interests?

A. Not at all, because the rates charged is the same tariff as is made by competing lines. Ballard & Ballard being compelled to ship their property by the L. & N. Railroad are not injured a particle. We are very careful to make the rates of the Louisville & Nashville Railroad as low as by any competing lines, and we take good care of the public. It is for the interest of the L. & N. Railroad Co. to promote and build up traffic and not to do anything to injure the public. It can only exist by creating and increasing this traffic.

37. If it is so solicitous for the building up of business, in the exercise of this arbitrary right, might it not then in the exercise of that right build up one enterprise in Louisville and crush
862 another?

A. No sir; it would not be to its interest to do so, and it would be illegal. Unjust discrimination has always been illegal, and unjust discrimination has never been practiced by the L. & N. Railroad Co. for the thirty odd years I have been connected with it.

38. That is your opinion, I want to know facts.

A. No, it is not my opinion, that is what I know absolutely to be true.

39. There is where we differ.

A. I think my opinion on that is worth a good deal more than

yours. I have been in charge of the adjustment of these rates since 1869. I think my opinion is much more valuable than yours on that subject.

40. I am not going to take issue with you on that. Has the policy of the Louisville & Nashville Railroad Co. changed in the slightest extent in the regard of which you have been speaking since the adoption of the new Constitution of Kentucky in 1891?

863 A. Not to my knowledge.

41. What classification does live stock belong to; is it high class perishable or the same grade as dead freight; how is it classified?

A. It is classified as live stock, a commodity by itself.

42. Is it regarded as perishable in railroad parlance?

A. I never heard it classified as perishable, it does however require prompt attention and special care.

43. Does it or not receive more prompt attention than dead freight when it reaches a terminal point, or at all?

A. Necessarily, because we want to get stock unloaded where it can be cared for and fed.

44. You have been connected with the Louisville & Nashville Railroad for how long, did you say?

A. Since 1865, with an interim of three years.

45. What years, can you recall, that elapsed when you were not in that service?

A. 1879, 1880 and 1881.

46. When did you become President of the road, if you remember?

864 A. First made President June 11th, 1884.

47. Prior to that you had been Vice President for how long?

A. From January 1st, 1882.

48. Before coming Vice President, I believe you were Vice President and Traffic Manager for a while, were you not?

A. Third Vice President and Traffic Manager from December 8th, 1881, to July 6th, 1882. I was elected in December, 1881, but did not assume the duties until January 1st, 1882. Vice President from July 6th, 1882, until June 11th, 1884.

49. When did you first become Vice President, or when did you first cease to be Local Freight Agent in Louisville?

A. Suppose we go back; I was appointed Local Freight Agent of the Louisville & Nashville Railroad, August, 1866. I was promoted to General Freight Agent in June, 1869, which position I held until October 1st, 1878.

50. You were then General Freight Agent of the Louisville & Nashville Railroad Company from the dates just mentioned, when the Louisville Railway Transfer Company was built, were you not?

A. I was either Local Freight Agent or General Freight
865 Agent when that was built. I think that road was built in 1869, possibly 1870.

51. To refresh your recollection about that, I refer you to the charter, which was approved March 10th, 1871, and being chapter

1489 of the Acts of the Legislature of Kentucky for 1871; you were then General Freight Agent at that time?

A. I was General Freight Agent in 1871.

52. Are you familiar with the charter of the Louisville Railway Transfer Company?

A. I cannot say I am; I have not read it for probably a good many years.

53. Don't you know the Louisville Railway Transfer Co. under its charter was built by the Louisville, Cincinnati & Lexington Railroad Co. and the Louisville & Nashville Railroad Co. jointly, each having one half interest in the capital stock of the company, and joint owners of the property for a number of years?

866 A. I know that the L. & N. and L. C. & L. furnished the capital and credit paying for the cost of constructing the road, in a general way. Without refreshing my memory I cannot state the particulars.

54. Without details, it is true that later the Louisville & Nashville Railroad Company bought the Louisville, Cincinnati & Lexington and took with it the ownership of the Louisville Railway Transfer Co., or the stock, is not that true?

A. I should say that would be true.

55. And there was a three hundred thousand dollar bond on that, was there not?

A. I don't know without refreshing my recollection.

56. To refresh your recollection on that I refer you to a certified copy of a deed, made November .893, by yourself as President of the Louisville Railway Transfer Company to the Louisville & Nashville Railroad Co. and ask you if that was not executed immediately after the retirement of the bonded debt of the Louisville Railway Transfer Co.?

A. There does not seem to be anything about that bond in this deed.

867 57. Is it not a fact you did not make that transfer until the bonds were paid?

A. I don't know. That simply seems to be a sale of the Louisville Railway Transfer Co. of all of its property, I should think.

58. Was not the franchise right of a corporation retained by the Louisville Railway Transfer Co., and does not it still exist as a corporation, the Louisville Railway Transfer Co. with a nominal existence, and did not that deed convey everything except the right to be a corporation?

A. It seems to have sold all of its property including the track and all other property rights, privileges, immunities, and franchises of the said Louisville Railway Transfer Co. except alone the right to be a corporation.

59. I will ask you to file that deed as part of your deposition, marked Exhibit M. H. S. No. 1?

A. I do so.

868 60. Were you familiar with the contract made by the City of Louisville of the first part, The Louisville, Cincinnati & Lexington Railroad Co. of the second part, and the Louis-

ville & Nashville Railroad Co. of the third part, on the 3rd day of June, 1870, an attested copy of which said contract as it appears of record in the office of the Board of Aldermen of the City of Louisville I now exhibit to you?

A. I am not.

61. You know nothing of the terms of that contract and the conditions upon which the right to operate that track existed with the consent of the City of Louisville?

A. You asked me if I am facilier with the contract. I probably am aware some such contract exists, but if I ever read it I have forgotten all about it.

62. I will be glad if you will read it and tell us whether or not you have heretofore read that contract. You testified once before that you had repeatedly read it, as I remember?

A. I have read it hurriedly.

63. Will you file that and make it a part of your deposi-
869 tion marked M. H. S. No. 2?

A. I do so.

64. By reference to the third section of the Act incorporating the Louisville Railway Transfer Co., I find it is provided as follows:

"That said railroad companies shall not sell and transfer said stock to any other person or corporations without the consent of the city, evidenced by a resolution of the General Council."

Do you know whether or not the Louisville & Nashville Railroad Co. acquired that written consent evidenced by a resolution of the General Council in the purchase of the Louisville Railway Transfer Co.?

A. I do not.

65. It is further provided in Section 5 of the said charter of the Louisville Railway Transfer Co. among other things as follows:

"That all shippers over or along the line of the connecting roads shall be entitled to side tracks and switches; and said Trans-
870 fer Company shall furnish to all shippers by the car load empty cars at either end of said road, or at any switch or side track thereon, and to deliver loaded cars at either end of the road, or at any switch or side track, at $1. per loaded car, and empty cars free of charge, in accordance with the contract with the City of Louisville."

I will ask you to state whether or not the Louisville & Nashville Railroad Co. has observed that requirement in its operation of the Louisville Railway Transfer Co.?

A. So far as I know, the Louisville & Nashville Railroad Co. for itself, and also as owner of the Louisville, Cincinnati & Lexington Railroad Co. has complied and is complying with the terms of its contract with the city. I find that one of the conditions of the contract reads as follows:

"The party of the second part (The L. C. & L. Railroad) shall receive from and deliver to the owners, Louisville freight destined for, or coming from points on the Louisville & Nashville Railroad, by the loaded car load from one consignor to one consignee,
871 in the depot at the head of Jefferson Street, and at the various private side tracks that may be established along the line of

the connecting track; the party of the third part agrees to receive from and deliver to the party of the second part such freight at the junction of the connecting track below the house of Refuge, and in consideration of the said freight being loaded in, or unloaded from the cars at the expense of the shipper, the party of the third part agrees to charge $1. less per car load from their Broadway Depot for all such freight as should have been loaded or unloaded at the expense of the party of the third part, and the party of the second part binds itself not to charge more than $1. per car load for carrying said freight between the junction of the two roads near the House of Refuge and their depot at the head of Jefferson Street, or from or two any of the side tracks on said connecting road."

66. The general freight depot of the Louisville & Nashville Railroad Co. at that time was at 9th and Broadway, was it not?

A. Yes sir.

872 67. When was that A Street connection of the Louisville Railway Transfer Co. constructed, do you remember, about the time?

A. The Ordinance authorizing its construction was adopted by the Council in 1882. The road was not constructed for several years after that. I do not recall the year when it was constructed.

68. It was constructed however, as a part of the Louisville Railway Transfer Co., was it not?

A. It was rather a complicated transaction. My recollection is that the Ordinance or franchise was in the name of the C. O. & Southwestern Railway, and *at* the L. & N. Railroad entered into a contract with the C. O. & Southwestern to construct the road, giving the C. O. & Southwestern *to construct the road, giving the C. O. & Southwestern* the right to use it or assume ownership under certain conditions. That only applied to part of the way. A part of the way of the L. & N. Railroad bought the right of way, A Street not being at that time dedicated east of Second Street, I think perhaps east of First, and also bought part of the right of way where

873 it leaves the street across private property to connect with the Louisville Railway Transfer Co. I don't think the charter of the Louisville Railway Transfer Co. was used at all, but this transaction occurred a good many years ago and I have a good many things to think about, and I am not sure my statement is correct. If it is important I would like to verify it by referring to data on file in the offices of the company.

69. When that Louisville Railway Transfer Co. was originally constructed, is it not a fact that the Louisville, Cincinnati & Lexington tracks were upon a different gauge from those of the Louisville & Nashville Railroad Co.?

A. The same gauge.

70. Are you certain of that?

A. That ordinance shows that.

71. You read through the contract hurriedly; is it not therein provided that there shall be a third rail constructed at the

874 joint expense of the Louisville & Nashville Railroad Co. and the Louisville, Cincinnati & Lexington Railroad Co. from

the point of connection at or near the house of Refuge grounds or south of that around to the depot at Brook and Jefferson, and also from that same point of intersection to the freight depot of the L. & N. at 9th and Broadway, and was not that third rail necessitated by reason of the difference of gauge in the two roads?

A. When that contract with the City was negotiated, the gauge of the L. C. & L. and the L. & N. was the same, five feet, all roads south of the Ohio River were the same gauge. The contract with the City shows that before it (the City) would consent to a connection being made between the two railroads, it required the L. C. & L. Railroad to change the gauge from five feet to four feet, eight and a half inches. They stipulated that the track- should not be built within ten feet of each other until the L. C. & L. Railroad changed the gauge from five feet to four feet eight and a half inches, the object being to prevent interchange and require all passengers or traffic passing through Louisville to be transferred at Louis-
875 ville and not at Cincinnati. So earnest were the citizens of Louisville in that matter that they agreed that the City should pay three-fifths of the cost of changing the gauge, including the cost of changing the gauge of the rolling stock of the L. C. & L. Railroad. Now that change of gauge rendered it impossible for one road to do business with the other. If the gauge of the Louisville Railway Transfer were made the same as the L. C. & L., then nothing could go from the transfer railroad onto the L. N. Railroad and *vice versa*. And if the gauge of the Transfer Railway were made the same as the L. & N., five feet, the L. C. & L. being four feet eight and a half, nothing could go from the Transfer Company onto the L. C. & L. and *vice versa*. They provided that an additional rail should be put down so both of these cars could go to the industries around the city. As a matter of fact when they came to put it into operation they had to put in two rails making four rails in all, because the difference in a five foot gauge and a four foot eight and a half inch gauge was so little they could not get the third rail in, so they had to put down two rails, making a four track road.
876 That was all for the purpose of prohibiting interchange of cars and requiring property to be transferred here. The result was that in order to overcome that they provided trucks of different gauge, and simply lifted up the car, took out one set of trucks and put in another set of trucks, and sent the car on its way so that the money the City of Louisville expended to prevent the transfer of property in paying three-fifths of the expense of changing the gauge of the L. C. & L. Road to four feet, eight and a half inches was rendered futile. And later the gauge of all the roads south of the river was changed to the same, and the L. C. & L. got the City of Louisville and the L. & N. R. R. Co. to bear the expense of changing the gauge.

72. That did contemplate there should be deliveries to the industries built on that line?

A. Yes sir; coming from points on and going to points on the L. & N. Railroad.

73. What is the greater distance from the terminus of the Louis-

ville & Nashville Railroad at 9th and Broadway by way of the connection of the old Louisville, Cincinnati & Lexington with the Louisville & Nashville Railroad at South Louisville, south of the House of Refuge, thence to the old depot on Jefferson Street of the L. C. & L. at that time, as compared to the distance from 7th and
877 Magnolia Streets to the Bourbon Stock Yards; which was the greater distance?

A. I do not know exactly. I should say the distance from the station at 9th and Broadway to 7th and Magnolia would be nearly as great, perhaps not quite so great, as the distance from East Louisville to Jefferson and Brook, but there was never any traffic moved in cars between 9th and Broadway and Jefferson and Brook, because after that connecting track was built, or at the same time that track was built, the track on Jefferson was taken up and moved over north of Main Street.

74. Then came down to 1st and Water?

A. Yes sir.

75. The distance would be greater from 9th and Broadway to First and Water than from 7th and Magnolia to the Bourbon Stock Yards, would it not?

A. Yes sir; certainly, but I don't know how much, I should say perhaps two miles.

76. Speaking now as a practical railroad man of many years experience, what could have been the object of the city of Louisville in that contract referred to, as well as the State of Kentucky in the charter which it granted, in fixing the switching charge at
878 $1. in certain instances and not to exceed $2., unless that was upon a *renumerative* basis? Would capitalists have undertaken to build that unless these charges under the act would enable them to get something in return for their investment?

A. Those provisions were put in like the provision whereby the City and the L. & N. were to pay the expense of changing the gauge, to meet the views and whims of numerous people. When you are dealing with representatives of the city government and every citizen has a voice, you have to do the best you can, and often agree to many foolish things. Even the city was very foolish, as it was shown, in paying three-fifths of the expense of changing the gauge of the L. C. & L. Railroad and its equipment in order to bring about the transfer. The conditions of one and two dollars per car was put in because those who suggested it thought it would be a practical advantage to those who might establish industries along that line. They had this bugaboo in their heads that railroads are created to destroy traffic, not to promote and create it, and they were apparently afraid that if that provision was not in there they might
879 be charged some excessive rate for the service. It provides however to apply to traffic going to or coming from points on the L. & N. Railroad. The L. & N. Railroad can very well agree to switch that stuff for $1. per car if it can get the haul to Nashville, New Orleans, or other points south. As a matter of fact the Louisville & Nashville Railroad does not charge $1.00. As a matter

of fact the L. & N. Railroad does not charge $1.00. It moves traffic from those industries to points on its line and does not receive $1.00. It gets its compensation by promoting the increase of traffic. Ballard and Ballard started with sixty or seventy thousand barrels of flour a year, I think, when they commenced. They are now manufacturing about 700,000 barrels a year, those were the reasons that influenced it. I recollect very well that they had an indignation meeting when this matter was up; Judge Russell Huston was President for the time being, when they wanted to get this right to go through here. He tried to make a speech. He said if anybody wants to go to Cincinnati let them go. They attacked him for admitting that anybody had the right to go to Cincinnati, at-
880 tacked him in the newspapers here.

77. Reverting back to the car proposition, is there any difference of custom and practice of railroads, and of the Louisville & Nashville Railroad Co., in making an interchange of cars containing live stock for delivery purposes, from making delivery of cars containing live stock to a common carrier for further transportation?

A. None; it is all a matter of agreement and arrangement.

78. Is it not true that the Louisville & Nashville Railroad Co. receives cars daily from all of the railroads entering the City of Louisville, and practically all of them at 7th and Magnolia Streets and other points of connection known as the hub track or Dumesnil switch, and takes those cars containing live stock to the Bourbon Stock Yards?

A. Certainly.

79. What is the switching charge for that?

A. One or two dollars.

80. Is it not true that about the time of the opening of the Central Stock Yards, you reduced the switching charge for live stock coming over the I. C. and destined to the Bourbon Yards say,
881 from two or three dollars to one dollar?

A. I think that is true. Prior to that time live stock coming from the Illinois Central Railroad had been brought from its yards at 14th Street over the track of the Louisville Bridge Co. and over the short route transfer, and delivered to the L. & N. railroad in the vicinity of Preston and Water Streets, a very inconvenient arrangement. The L. & N. railroad had to have its switch engines there ready to take it, as there was no convenient place for them to put it on a side track, and to avoid delay there had to be some cooperation between the Illinois Central Railroad and the L. & N. yard force, to insure prompt delivery and movement, and for that movement the L. & N. Railroad Co. received $1.00 per car from Preston to the stock yards, and I think the Illinois Central perhaps charged something. To avoid the delay and expense, the L. & N. Railroad decided to reduce the charge to $1.00 a car, and receive the freight in the southern part of the city, the L. & N. looking for its compensation for the greater movement when that stock was shipped from the Bourbon Stock Yards, over its lines to Cincinnati or elsewhere.

382 81. Is it not a fact that the Louisville & Nashville Railroad Co. does secure transportation of live stock that is sold at the Central Stock Yards and passes over the Louisville & Nashville Railroad Company's tracks to Cincinnati?

A. It is a fact that it receives very little or none. It has a chance to get all of it at the Bourbon Stock Yards. If it gets anything at the Central Stock Yards it has not gotten three percent, probably not one percent.

82. You have not the statistics on that subject?

A. I have not, but I venture the opinion we have not received five per cent. of the stock shipped from the Central Stock Yards since the opening of that yard, and I am quite sure we get one hundred per cent. of the stock shipped from the Bourbon Stock Yards.

83. Is it not a fact that people are forced to take it over your line?

A. Yes sir; we refuse to ship it. That is what we created those facilities for. We do just as other corporations do under like circumstances, just as the Southern Railway; the Illinois Central Railroad has the same contract at Memphis, and use the same

383 means to promote the interests of their road in a legitimate way. We are legitimately entitled to the transportation of live stock from the Bourbon Stock Yards going to Cincinnati and beyond. We have the best facilities and can make better time. We can have the stock pretty well on the way to Cincinnati by the time it could be switched from here to points in connection with the Southern Railway, then when they get it to points of connection with the Southern in the City of Louisville they have a much longer haul than we have.

84. Do you know whether the Central Stock Yards are within the yard limits of the Southern Railway in the City of Louisville?

A. I do not know.

85. Mr. Spencer, a railroad official of the Southern says that within terminal limits it is customary for a car to run through; in fact even if the car is going past the ordinary interchange point, the car runs through, in other words, we do not as a rule transfer live stock unless the car is in bad order. Does that rule prevail with the Louisville & Nashville?

A. Live stock shipped by the Louisville & Nashville Rail-

384 road to a point beyond its own lines?

86. Reaching a city for delivery within the terminal limits of a connecting carrier to whom it is delivered for delivery purposes?

A. The L. & N. Railroad Co. would refuse to receive that car, would only receive the live stock consigned to the City of Louisville, to be delivered at its regular live stock station.

87. You have then only made delivery at the 7th and Magnolia Street connection to the Southern Railroad Co., of stock originating at any points in Kentucky and destined to the Central Yards by virtue of the mandatory injunction in this?

A. Our operating officers have been governed by instructions by the legal department.

88. That is contrary to the policy of the road independent of any legal proceedings?

A. It is contrary to the policy and very detrimental to the interests of the L. & N. Railroad Co.

89. Does the Louisville & Nashville Railroad Co. consider
885 the interests of the public at large, or only its own interests and the interest of those people on its own lines?

A. In providing adequate and commodious facilities at the live stock station in the City of Louisville, and furnishing prompt transportation at rates as low as are made by competing lines, it, in the opinion of the management, is fully protecting and promoting the interests of its patrons.

90. Do you mean by its patrons to confine it to such of the public as are located on your lines and accessible to them?

A. By patrons I mean shippers, and consignees, and owners of property transported.

91. To what extent would that benefit, if any, the public in a section of Kentucky through which the lines of the Louisville & Nashville Railroad Co. did not pass?

A. From non-competitive points we receive and switch for a dollar per car to the Bourbon Stock Yards, relying for our compensation for moving at the nominal rate of one or two dollars per car, upon the revenue we expect to derive when the live stock or
886 product of the live stock is shipped from the Bourbon Stock Yard station.

92. It is true that from competitive points you would not handle it at all?

A. We would not, because we would handle it at the same rate, the public is not injured, by the public I mean the patrons, shippers, consignees, owners of property.

93. Do you reserve the right to dictate to your patrons where their live stock shall be delivered?

A. We refuse to deliver it except at our regular established stations.

94. Then you will only receive it to be delivered there, and you thereby direct the shipper where delivery shall be made?

A. We refuse also to receive less than car load quantities of many classes of freight except at our regular freight station. We have one station for merchandise at 9th and Broadway. If a man wants to ship a hogshead of tobacco to this City of Louisville we deliver it to him at that point; we do not undertake to deliver it to him at any point on the Southern Railway or within the City of Louisville. We have established a station for the delivery of live stock,
887 and deliver there, and do not deliver it at any other.

95. Is it not true that live stock is handled in car loads?

A. Usually, not altogether so.

96. As a rule it comes in car loads?

A. As a rule, no. We ship whatever shippers want. If a shipper wants to ship one animal we take it upon terms agreed upon. Of course many more tons of live stock are shipped in car load quantities than in less than car load quantities, but all delivered at the same station.

97. Is it practicable from a railroad standpoint to unload and

reload live stock at a point of interchange with a connecting carrier, where it is only to be carried to a point within the switching limits of the carrier to whom the live stock is transferred. Would it not be very injurious to the live stock and impracticable from a railroad standpoint to have any such transfer made?

888 A. It is not impracticable, you might say not impossible to create facilities at a point of interchange where live stock might be transferred from one point to the other, but the L. & N. Railroad Co. would refuse to do that. That is, it would refuse to receipt for live stock to be so delivered at such a point of connection. It exercises its right, as I believe, to refuse to receive live stock except destined to a station where it has provided convenient and commodius facilities for unloading, loading, delivering, and receiving live stock in car loads and less than car loads. It exacts the same rules on many other classes of freight, almost everything except certain heavy commodities which are shipped in car load quantities. While it could be done, of course it would be unreasonable to undertake to enforce such regulation on that, if a car was only going a mile or two, to enforce a transfer at that point. We do not do it because it is not for the interests of the L. & N. Railroad to do it. The Southern Railway enforces the same regulation at other points. The L. & N. Railroad has built a railroad into the City of Knoxville——

889 98. We are speaking about Kentucky and about Kentucky laws and live stock as applied to them.

A. I am not speaking of that, I am giving you an example. The Southern Railway owns very extensive commodities and facilities in the city of Knoxville. We are building a road in there, and when we get ther- we will be in the same fix, we cannot get to their stock yards, and we cannot get them to receive stock from us that comes from competitive points. In other words, their terminal facilities have been created for their benefit and for the benefit of their patrons. and they are not going to give us the use of them on any inequitable basis or any insufficient compensation.

99. Where you bring a car load of dead freight over your lines to Louisville destined to an industry within the switching limits of Louisville, but on the line of a connecting carrier, how much time under the rules and regulations of your company is allowed that consignee for unloading that car load of dead freight of any character?

A. I do not know. The rules and regulations are changed from time to time and I am not familiar with the existing rules. I think it depends somewhat upon the character of freight. Some property might be given twenty-four hours, and if it was something

890 else that was more difficult to unload it might give it forty-eight hours. I think we should and do try to adapt our rules so as to make them equitable and fair.

100. Do you know of any commodity in an interchange of the kind just spoken of where the time is limited to less than an hour?

A. No.

101. Would an hour or two be regarded as a slight or great delay in the equipment of a connecting carrier?

A. A slight delay.

102. In all of the handling of live stock originating on points of your line in Kentucky, acting under the Law Department as you have stated, destined to the Central Stock Yards, and turned over to the Southern Railway at 7th and Magnolia Streets, to be delivered at Central Stock Yards, is it not true that upon the turning over of the live stock at 7th and Magnolia Streets, the Louisville & Nashville Railroad Co. is paid by the Southern Railroad Company its full Louisville rate on that live stock?

891 A. I would assume so, I don't know. I assume that is so.

103. The only object then if I understand in the policy adopted by your company is to make it a partnership or in the nature of a partnership with the parties on your line, and so operate the road as to better the interests of the Louisville & Nashville Railroad Co., regardless of the rights of the other people not on the Louisville & Nashville Railroad Co.'s line?

A. The Louisville & Nashville Railroad Co. endeavors to use its facilities located in the City of Louisville and elsewhere in a manner to promote the interests of the company. In promoting its interests it must necessarily promote the interest of its patrons, which it endeavors to do. It must, if it is continued to be a prosperous corporation, do everything in its power to increase its traffic, to encourage its existing patrons and to secure additional patrons. In doing this it must necessarily promote the interests of what in this connection we term the public, that is shippers and consignees, or owners of property transported. In the opinion of the management, the

892 Louisville & Nashville Railroad Co. is not required to use its facilities in which it has invested many millions of dollars and is almost daily investing large additional sums to increase and add to such facilities, to promote and protect the interests of competing carriers, said competing carriers being in every way competent and able to protect their own interests, and such carriers doing, as the Louisville & Nashville Railroad Co. is doing, what they can to promote the interests of their patrons by increasing and adding to their facilities, and increasing traffic, in that way increasing their revenues.

104. If I understand you then in your explanation, it is the judgment of the Louisville & Nashville Railroad Co.'s management that with respect to the matter of switching and the interchange of traffic from one connecting carrier to the *the* other for delivery purposes, it is a matter solely to be controlled by the Louisville & Nashville Railroad Co., and cannot be affected by any positive requirements of law?

A. I don't think that any opinion I might express upon the legality of the matter——

893 105. The policy of the management I am speaking of, not legality?

A. I am not prepared to express an opinion on what can or cannot be acquired by law. The Louisville & Nashville Railroad Co. is a law abiding corporation, and its management so far as I represent it, has not been advised that the action it has taken or the policy

it has pursued relative to permitting its cars to go to points on connecting lines is illegal or unlawful.

106. The terminal facilities then of the Louisville & Nashville Railroad Co., within the contemplation of said railway's management, are primarily for its service and secondarily the public service, is that true?

A. The terminals of the Louisville & Nashville Railroad Co. were constructed solely to promote traffic between said terminals and points on and reached by the L. & N. Railroad Co. They were not created for the purpose of promoting traffic between such terminals and points on competing lines.

107. You say that the switching charges for the service
894 that is rendered by your road in Louisville are not upon a compensatory basis, taking into consideration the investment and cost of such terminals and the cost of maintenance of them; why are those charges fixed at a losing rate?

A. The switching charges of $1. and $2. per car were fixed for the purpose of promoting traffic over the L. & N. Railroad as heretofore explained. A car of grain reaching Louisville from St. Louis or Chicago consigned to Ballard & Ballard Co. is switched by the Louisville & Nashville Railroad Co. from the point of interchange with the carrier bringing it to Louisville, to the mill, for $1. per car, the L. & N. Railroad Co. relying for its remuneration upon the revenue it will derive when that grain is manufactured into flour and shipped to points on and reached by its lines, I will add that in many places and under some circumstances no switching charge is made. In the City of Nashville the Louisville & Nashville Railroad Co. and the N. C. & L. Railway Co., the two companies having very extension terminal facilities in and around that city, make no switch-
ing charge on traffic going in or coming out, as practically all
895 of such traffic either comes from or goes to points on or reached by those roads.

108. Is it not true that you do interchange traffic including car load lots of live stock, with the Southern Railway Co., at 7th and Magnolia Streets, where it is going to any other point or station on the Southern Railway Co.'s lines other than Central Stock Yards?

A. The Louisville & Nashville Railroad Co. receives live stock in car load quantities at 7th and Magnolia from the Southern Railway, and switches to the Bourbon Stock Yards for $1. per car, relying for its compensation upon securing the transportation of the live stock when it is forward from its live stock station in East Louisville. It will receive live stock at its station in East Louisville and switch it to the Southern Railway for $1. or $2. per car, when destined to a non-competitive point on the Southern Railway, relying upon having received its compensation on the stock when it was shipped into its station from some point on its line.

109. Might not then some stock reach Bourbon Yards that
896 came from a non-competitive point on the Southern, and then be loaded and handled by the Louisville & Nashville Railroad Co. and go back to some non-competitive point on the Southern?

A. It might, but it is not at all probable, and the L. & N. Railroad Co. under those circumstances have to take the chances. If such transaction is made it has been, you might say buncoed into moving a car for $1. one way and $1. back, that has probably cost it ten, fifteen or twenty dollars. Those transactions if they ever have occurred are very few and far between.

110. You said something about the old litigation with the Southern Railway Co. about a lumber transaction, intended for a cotton mill, and in which it was endeavoring—The Louisville Southern Railway and K. & I., to require you to take the said lumber and make delivery of it at the place intended for its use, and that you refused to handle it. I will ask you to state if that was not prior to September 28th, 1891?

A. I don't know. I- was when the cotton mill located out here near Shelby Street was being constructed, I don't know what year.

897 111. It is the case Judge Jackson decided in the Federal Court, is it not?

A. I think not. I don't know of any such litigation in the Federal Court. The only case he had was what was known as the K. & I. Bridge case.

112. Was this before or subsequent to that?

A. I don't know. It was soon after the Louisville Southern was opened for traffic.

113. Do you remember what year it opened for traffic?

A. No, I do not.

114. Now that cotton mill to which you had reference, was that on the lines of the Louisville & Nashville Railroad Co.?

A. That was to be erected at a point on the lines of the Louisville & Nashville Co. It is the cotton mill near the intersection of Shelby Street and the connecting track.

115. It is on the line of the Louisville & Nashville, is it not?

A. Yes, sir; what is now the Louisville & Nashville.

116. Why was it that in that case you did not rely upon getting the product of that cotton mill to be shipped out and keep up your theory of the traffic on this?

898 A. They could not very well change that timber into product.

117. They could put it into a house and use the house to manufacture a product, could they not?

A. The owners of the mill would have been glad to have had the property shipped over the L. & N. Road. The contractor, the builder was the one interested. He had taken the contract to build the mill, and he had secured a reduced rate, or a rebate from this line, that was his reason for directing shipment by that line. It was not the owners of the cotton mill that would have been benefited, but the contractor only.

118. It would have been manifestly to the interest of the Louisville & Nashville Railroad Co. to have had that plant erected, would it not?

A. And the plant was erected; our refusal to switch had no influence on the erection of the mill.

119. It only added to the cost of getting that material from the termini of the Southern to the point where it was to be used?

899 A. It was a matter in which the contractor only was interested. Had he secured the transporation at the reduced rate he would have had the benefit.

120. Then so far as the contractor was the patron of a connecting carrier, who was unable to get this reduced rate, your policy operated against that?

A. In that particular instance he was a patron of a competing line, not of the L. & N. Railroad.

121. Any patron then of a competing line is entitled to no recognition by the Louisville & Nashville Railroad Co. as a part of the public?

A. The patron of a competing line has no relations with the L. & N. Railroad Co. whatever, unless he becomes a patron of the Louisville & Nashville Railroad Co.

122. Mr. Bruce asked you in the course of your direct examination about your facilities for the inspection of live stock at the Bourbon yards, and as compared to the facilities for the inspection of live stock at the Central Yards. I will ask you what if any difference exists between the character of inspection the Southern has of

900 its live stock where it goes to the Bourbon Yards and the character of inspection the Louisville & Nashville gets where the stock goes to the Central Yards? As between the two roads is it not relying the one upon the good faith of the other in reporting facts as they exist?

A. Practically so. I do not consider it a matter of very great importance; that is not a controlling reason. As a matter of course live stock might be injured between the time we make delivery on the K. & I. Bridge tracks at 7th and Magnolia and the time of unloading at the Central Stock Yards, and the inspection would be made by the agents of the Southern Railway. On the other hand if stock was taken to our live stock station at East Louisville it would be inspected by our agents, and question of location of damage would not come up because if the stock delivered at the live stock station at East Louisville was not damaged, we would know it was on the L. & N. Road that live stock was injured. With delivery at the Central Stock Yards we could not tell whether it was or was not injured on the L. & N. or Southern; that would be the difference, but I do not consider that the controlling reason for our refusal to

901 deliver stock there. The other reasons I have given cover it. Those are risks we have to take when we handle traffic and allow our cars to go through on other roads with live stock or any other class of traffic.

123. Is it not true that the controlling reason that the Louisville & Nashville has — that it wants it to go to the Bourbon Yards that it may have the revenue derived for hauling it from there?

A. Certainly.

124. That is to their interest?

A. Certainly it is. It is for the interest of the L. & N. Railroad Co. We are in that business to promote the interest of the Louisville & Nashville Railroad Co., and we can only do it by promoting the interest of our patrons. We furnish better facilities; if we can get a larger share of the business, if we can treat everybody a little better that anybody else, that is what we try to do, and do better by the public than anybody else, that is the way we undertake to attract business.

125. Every road tries to do the same thing?

A. That is what creates competition and is building up
902 this country, but if you take our facilities and turn them over to competing lines after we have created them, if that is what they are for we would never have created them.

126. There is just as much likelihood of live stock being injured that came over the Southern Railway and is delivered to the Louisville & Nashville at 7th and Magnolia and taken to the Bourbon yards in that transit, as there would be in transit from 7th and Magnolia to the Central yards?

A. Certainly that might be.

127. But no difficulty exists between reputable roads like the Louisville & Nashville and the Southern Railroad in matters of that kind?

A. They have difficulties, they have contentions, they have disputes, and they have claims etc., but they have to get along with it the best they can, because it is to their interest. That interchange takes place, but each company must reserve the right to decide for itself whether its interests will be promoted by such exchange of cars and facilities.

128. And in determination of that question of promotion of interests, the amount of money to be gotten out of the traffic
903 is the controlling question?

A. Is one of the things, yes sir.

129. Your live stock depot is the Bourbon Stock Yards in the easterly part of the City of Louisville, is it not?

A. The principal live stock station of the Louisville & Nashville Railroad Co. in the City of Louisville is along side of its property, and as you know by the contract that you have, it has contracted with the Bourbon Stock Yards Co. to act as its agent in receiving, loading, unloading and delivering live stock at such station. We pay them a compensation for performing that service, furnishing facilities and performing the service. They are bonded agents of the company to collect money and report to our treasurer etc.

130. Of the live stock coming into the City of Louisville, how many railroads bringing the same can reach the Bourbon Yards?

A. All can reach them over the L. & N. tracks, none with their own tracks.

131. None with their own tracks?

A. No.

132. How many of those roads that bring live stock to Louisville, entering Louisville on the western side of the central portion
904 of the City of Louisville, say 7th and Magnolia or 9th and Dumesnil, or such other points west of 4th Street—how many

roads connect with your line for such delivery purposes west of 4th Street?

A. All of them except the Chesapeake & Ohio, and Big Four. There is shown the inequity of the demand being made upon us to deliver our cars to connecting roads. The Chesapeake & Ohio, the Big Four, the Monon, and originally the Louisville Southern, extended their lines just into the City of Louisville, just stuck their noses in. Their facilities are exceedingly limited, and it seems to me nothing could better illustrate the inequity of requiring the L. & N. Railroad Co. to turn over its extensive terminal facilities for the use of these companies who have not expended but a very small percentage of the money of the L. & N. Railroad Co. has expended in terminal facilities. The Louisville Southern originally ended at the city limits, and as I say, came up and demanded the use of the L. & N. facilities at $1. per car. All a railroad has to do if we are required to do that is to build to some point connecting with the L.
905 & N., then it need not worry about terminal facilities, they can simply transfer to the L. & N. and save that enormous investment and enormous expense of maintenance and operation. The Illinois Central is almost in the same fix, they have something but not much, The Louisville Southern has acquired in some way control of what is known as the K. & I. Bridge property, and they have more facilities in that way, indirectly, in the western part of the city. The Pennsylvania Railroad Co. has some along the line of 14th Street out as far as Maple. All of them together have not such facilities in the City of Louisville as the Louisville & Nashville Railroad Co., and what you are now requiring of the L. & N. Railroad Co. is to turn all the facilities of the L. & N. Railroad Co. as created at an expense of several millions of dollars, over to these competing lines, which is inequitable and unjust, even if it is legal.

133. Would it require all of the terminals of the Louisville & Nashville Railroad Co. in order for it to move a car from South Louisville to 7th and Magnolia Streets?

A. That does not require all, that is only a part, but the principle is the same. If you can require us to do that you can require us to turn over everything we have. If you can require us to
906 do that you can require us to switch lumber from every road for a dollar per car.

134. Reverting back to the question of parting with your equipment, you say it is unjust to ask that you should part with your equipment for delivery purposes. Is it any more unjust that your road be required to part with its cars where the same can be taken to the delivery point and returned within an hour, than it is to require those other connecting carriers to part with their equipment that has to move a much greater distance from the point of connection where the live stock is destined to the Bourbon Yards?

A. We do not require the other roads to do that, they do it of their own will. It is not a question of what has been or is being done. The point involved is has a railway company the right to say whether its equipment shall be delivered to a connecting carrier, a competing line, on demand, be forced to do it, or not. We claim,

and every other railroad company in the United States claims that its equipment belongs to itself, and that it cannot be required to permit such equipment to go off its line, engines, passenger
907 cars or freight cars, without its consent. Is it all a matter of arrangement. The delivery of a car of live stock to the Southern Railway at the K. & I. Bridge connection at 7th and Magnolia to be taken to the Central Stock Yards and returned within an hour would not be an undue delay by any means. It would not be done. It might be made a special run and possibly be done, the chances are it would be at least twenty-four hours. It is possible for the Southern Railway so take that car after it takes possession of it and send it to California, we may never get it back again.

135. In that state of case the per diem rules for the use of the car and its penalties would be inflicted upon the railroad for the misuse of the equipment, would it not?

A. I think not. I think if a car was kept moving from one road to the other, moving about, we could get twenty cents a day under the per diem rules. Those per diem rules have not been in effect long. They took the place of our rules in effect prior to that time. I think the whole system of per diem compensation is going to fail, and we will probably soon be back to the old basis of doing business, when we were simply to receive compensation for the number
908 of miles a car was moved instead of twenty cents per day. The twenty cents per day is of course wholly inadequate. If the car is kept moving we only get twenty cents per day.

136. There was then before the per diem rules an interchange mileage basis between all reputable railroads, was there not?

A. There has been for many years a certain basis for compensating a road for the use of its cars on another road, when it allowed its cars to go off on another road, but there has never been a rule or regulation requiring a railroad company to permit a car to leave its own tracks without its consent.

137. Is not there a rule with the superintendents of the various roads entering the City of Louisville that they will allow their cars to go onto the tracks of a connecting carrier, where it is only for delivery purposes and within the switching limits of the points of interchange?

A. There may be such an agreement, but as I say, it is a matter of agreement. Any of the railroads not parties to the agreement or refusing to be parties to the agreement might refuse to let
909 their cars go. We refuse to let our cars go from the road. For illustration, the Central Coal & Iron Co. have a mine on the Illinois Central Railroad. They had entered into contracts to sell coal to certain parties in the City of Louisville. For some reason they were unable to get transportation from the Illinois Central Railroad Co. to fill those contracts. They came into the mines on the L. & N. Railroad Co. and bought coal. The Central Coal & Iron Co. bought coal from other mines to be shipped to Louisville, and undertook to have it delivered on those contracts on other roads, and we refused to furnish cars to transport the coal. We want our cars to transport coal to industries upon the Louisville & Nashville Rail-

road. It would be unjust to divert that coal from our regular patrons to the patrons of the Central Coal & Iron Co., their mine being on the Illinois Central Road. That is our way in order to help out our neighbors, in this case we have taken care of our own obligations.

138. How long have you had this exclusive live stock depot to which you refer and at which you claim the right to make all deliveries of live stock?

A. Well for a good many years, I think that was our station before the Louisville & Nashville Railroad bought the L. C. & L. Railroad, and that transaction became effective on the 1st of
910 July, 1881. I think we made that our station before that but I am not positive about it, I think so.

139. It was prior to 1891, at any rate, was it not?

A. Yes sir.

140. You once owned this land, or the Louisville & Nashville Railroad Co., upon which the Central Stock Yards Co. was built, did you not?

A. The Louisville & Nashville Railroad Co. in acquiring the property at South Louisville upon which to erect shops, construct yards etc., acquired property east of what would be Floyd Street extended, for which it had no use. It sold such property to John Cudahay, reserving or stipulating that a street which should be an extension of Floyd Street, 60 feet wide, should be dedicated for street purposes.

141. I will ask you to file that deed as a part of your deposition, marking it Exhibit M. H. S. No. 3?

A. All right.

142. When you sold that property to Mr. Cudahay, you knew by reputation the business Mr. Cudahay was engaged in, did you not?

A. I knew he was what we call a packer.

143. Did not you know and did not he tell you at that
911 time he was buying that for stock yard purposes?

A. I don't think he did. He told me he was buying it for packing house purposes, that is my recollection, to construct a packing house on.

144. Are you quite certain he did not tell you he was going to construct stock yards there to be known as Central Stock Yards?

A. I don't recall that. I think, but I am not certain, I think the question of switching live stock that he might purchase at the Bourbon Stock Yards to this place was discussed, but it is so long ago, and I have a good many things to forget that I am not sure.

145. You knew he was a large packer?

A. Yes, and that he bought the property for the purpose as avowed by him of erecting a packing house upon it.

146. Did not he also avow in connection with the packing house that he was going to erect a stock yards?

A. If he did I have forgotten it, I have no recollection.

147. Did not you know soon thereafter the fact that the organiza-

tion of that stock yards as contemplated by Cudahay was in
912 process, and that the Bourbon Stock Yards gave Cudahay and his associates $250,000 worth of stock of an increased issue of the Bourbon Stock Yards, to induce them to refrain from so building the yards?

A. I know in a general way that there was some transaction between Cudahay and his associates and the Bourbon Stock Yards, whereby he purchased the old packing house of Hughes-Taggert & Co., and enlarged it and undertook to very largely increase the business of the Bourbon Stock Yards, or to make the market more desirable and in that way increase the business.

148. That was a transaction between Mr. Cudahay and the Bourbon Yards?

A. The L. & N. Railroad had nothing to do with it. I really don't know anything about it, I only know from general report that some such transaction was made and the claim was he was going to do something that would very greatly benefit the Bourbon Stock Yards, because he was going to largely increase the market.

149. Those representations were not made to you because you had no interest in it?

913 A. No, that was merely general report, except the reasons given for the transaction.

150. I notice in this deed which you last filed the following reservation: "And also that the party of the first part (meaning the Louisville & Nashville Railroad Company) shall have the privilege of crossing with its railroad tracks said strip so dedicated for street purposes at any point or points between the right of way of the Louisville Southern Railroad and the said southern boundary of the land herein conveyed," then going on to convey. What was that reservation made for?

A. It was for the purpose of permitting the Louisville & Nashville Railroad Co. to construct a sidetrack, if it wanted to, into any industry that might be established out there without having to apply to the City Council if within the city, or to the county authorities, for the right to cross the street.

Redirect examination by Mr. BRUCE:

151. Will you please state whether or not prior to the construction of the Central Stock Yards you stated to the President or any officer or promoter of the Central Stock Yards whether the
914 Louisville & Nashville Railroad Co. would or would not switch cars to the Central Stock Yards?

A. I had two or more, I think three interviews on that subject with Mr. Hert when he was promoting the organization of this enterprise, at which he wanted me to agree to put in sidetracks, that the L. & N. Railroad Co. should put in side tracks and make it one of its stations for the delivery of live stock, and I refused positively to do it, told him we would not do it, and explained to him our reasons, explained to him our relations with the Bourbon Stock Yards, that we had established a station at East Louisville, and that we claimed the right, claimed the legal right to say where our station for receiving

and delivering live stock should be located in any city. I don't think that at such interviews the question of reaching the proposed stock yards via the Southern Railroad was discussed. My recollection is the discussion was confined solely to his request that the L. & N. Railroad Co. build a track in and make it one of its stations. He claimed that it was not a technical violation of our agreement with the Bourbon Stock Yard Co. because the yard would mainly be outside of the city limits of the City of Louisville.

915 152. Did he or not then know, prior to the building of the property of the Central Stock Yard Co., what the relations of the Louisville & Nashville Railroad Co., with the Bourbon Stock Yards Co. were, and what the position of the Louisville & Nashville Railroad Co. upon that matter was?

A. I explained to him fully not only our relations but our policy, and told him positively that he would not build a track to such yards, nor would we make it a station for receiving and delivering stock.

153. Since the Louisville & Nashville Railroad Co. created the Bourbon Stock Yards its live stock depot for the City of Louisville, I will ask you to state whether or not the Louisville & Nashville Railroad Co. has uniformly and without discrimination, without regard to who might be the owners or consignees of the stock, delivered at the Bourbon Stock Yards all live stock transported by the Louisville & Nashville Railroad Co. to the Louisville market? I do not mean by this question to ask whether or not any character of discriminations have been made as to charges for transportation, but simply mean to ask whether or not all live stock destined for the Louisville market has been delivered at the Bourbon Stock Yards without any discrimination as to owners or consignees?

916 Objected to by counsel for plaintiff.

A. It has.

154. Reference has been made by counsel for the Central Stock Yards Co. to a provision in the charter of the Louisville Railway Transfer Co., providing in effect that all shippers over or along the line on the connecting roads shall be entitled to side rracks and switches and transfer company shall furnish to all shippers by the car load empty cars at either end of such road or at any switch or side track thereon, and to deliver loaded cars at either end of the road, or at any switch or side track, at $1. per loaded car, and empty cars free of charge, in accordance with the contract with the City of Louisville. And in that connection reference has been made to a provision in this contract here referred to to the effect that the party of the second part shall receive from and deliver to the owners Louisville freight destined for or coming from points on the Louisville & Nashville Railroad, by the loaded car load from one consignor to one consignee, in the depot at the head of Jefferson Street, and at the various side tracks that may be established along the line

917 of the connecting track etc. Will you please state whether or not as a matter of practical construction either of that charter or of this contract by the parties in *in* interest this thing has ever been construed to mean that the railroad companies should de-

liver live stock at any side track that might be established along that connecting road.

Objected to by counsel for plaintiff as calling for the construction of the contract.

A. It never has.

By Mr. DODDS:

155. Do you remember of the Louisville & Nashville Railroad Co.'s receiving at Lexington, Ky., some seventeen or eighteen car loads of live stock, and making delivery thereof at a point on the Southern Railway Co. in the western part of the City of Louisville that was intended for slop cattle at a distillery?

A. I do not know of such a transaction. If done it was a matter of special agreement.

918 THURSDAY, *March* 5, 1903.

Met pursuant to adjournment.

C. O. BRADFORD, called on behalf of the defendant, being duly sworn and examined by Mr. Bruce, testified as follows:

1. Mr. Bradford, you, I believe, are a civil engineer?

A. Yes sir.

2. And now acting as the real estate agent of the Louisville & Nashville Railroad Company?

A. Yes, sir.

3. How long have you been engaged in the profession of civil engineering?

A. Twenty-six or twenty-seven years.

4. How long have you been real estate agent for the Louisville & Nashville Railroad Company?

A. Ever since 1892.

5. Have you prepared a map showing the railroad situation in the City of Louisville—the different railroads entering it, and how they run into it, and through it, and around it?

A. I have a map prepared under my supervision in my office.

6. Will you please file that map with your deposition and mark it "C. O. Bradford No. 1"?

A. Yes, sir; I do so.

7. Please explain the different colors in use on that map?

A. The lines which are colored in red upon this blue print
919 are the lines of the Louisville & Nashville Railroad; the lines colored in yellow are the railroad of the Southern Railway; the lines colored in green are the Pennsylvania Company's lines, and the lines colored in blue are the Kentucky & Indiana Bridge Company's tracks.

8. Have you indicated in any way on that map the location of the Bourbon Stock Yards and the Central Stock Yards?

A. The Bourbon are located near the point marked "B," The Central Stock Yards are shown on the map just below the letter "E" and marked "Central Stock Yards."

9. Also marked in yellow?
A. The tracks are marked in yellow.
10. The tracks around the Central Stock Yards are marked in ellow?
A. The tracks around the Central Stock Yards are marked in ellow.
11. Does that plat, or not, correctly show the railroad situation n the City of Louisville?
A. Yes, sir.
12. What is the distance from South Louisville via the line of the ouisville & Nashville Railroad Company, to the Bourbon Stock Yards?
A. 3.94 miles.
13. What is the distance, by rail, from South Louisville ia the Louisville & Nashville Railroad to 7th and Magnolia, thence rom 7th and Magnolia via the Kentucky & Indiana Bridge Company's track to the junction with the Southern Railway, and thence ia the Southern Railway to the Central Stock Yards?
A. 3.81 miles.
14. What is the distance from South Louisville via the Louisville & Nashville Railroad to 7th and Magnolia?
A. 1.71 miles.
15. What is the distance from 7th and Magnolia via the Louisville & Nashville Railroad, to Kentucky Street?
A. .76 of a mile.
16. What is the point or where is the point at which the Southern Railway tracks and the Kentucky & Indiana Bridge Company's racks unite?
A. They unite on Magnolia Avenue.
17. At about what street?
A. East of 14th.
18. East of 14th?
A. East of 14th Street.
19. What letter on this map which you have filed, indicates the point where the Louisville & Nashville Railroad crosses Kentucky street?
A. G.

Cross-examined by Mr. J. C. Dodd:

20. Mr. Bradford, do you know anything of the ownership of the racks and operating privileges enjoyed by the Southern Railway Company from the point marked on this map as letter "D" to the letter "C," which you have marked "K. & I. Br. Track"? Do you know anything about that?
A. I only know that those tracks belong to the K. & I. Bridge Company. I have never seen any contract between the Bridge Company and the Southern Railway, so I don't know.
21. How do you know they belong to the K. & I. Bridge Company?
A. We have got some papers on file in our office that indicate those tracks belong to the Kentucky & Indiana Bridge Company.

22. Have you ever seen any title deed to that track?

A. These papers I refer to are not exactly in the shape of a title deed, but they are papers that give the Kentucky & Indiana Bridge Company the title to that track.

922 23. Don't you know that when that track was constructed it was during the period of time that what is now the Southern Railway in Kentucky was the Louisville Southern Railway Company, and that it was jointly constructed, with one-half ownership in the Louisville Southern Railway Company, which said one-half interest is now owned by the Southern Railway Company in Kentucky?

A. No, I don't think that is true.

24. If the Southern Railway Company's officials should say that was true, then they are mistaken, are they?

A. I suppose they wouldn't tell a story about it.

25. Who would know the better about the ownership of that track: You, as an engineer of the Louisville & Nashville Railroad Company, or an official of the Southern Railway Company in Kentucky which acquired a part ownership in it?

A. I should say the official of the Southern Railway Company.

26. Why did you not inform yourself as to the real ownership of that track before making this map, and let that yellow line extend down to 7th and Magnolia Street and mark it "Joint

923 track of the Kentucky & Indiana Bridge Company and Southern Railway Company"?

A. Because the papers that I have before referred to indicate that the track belongs to the Kentucky & Indiana Bridge Company.

27. What papers are they?

A. I can't tell what they are. They are some papers in connection with the construction of those tracks at Magnolia Avenue.

28. When did you get those papers?

A. They have been in our possession for some years.

29. Will you furnish copies and file them as part of your deposition—the papers that indicate that the track belongs to the Kentucky & Indiana Bridge Company?

A. If our attorney says to furnish them, I will furnish them. They are not in my custody—they don't belong to me.

30. I don't ask you to part with the original papers, but I will ask you if you will be good enough to have copies made of what you refer to in your files showing the ownership of that track in the Kentucky & Indiana Bridge Company,—and make them a part of your deposition in this case?

By the WITNESS to Mr. Bruce: Mr. Bruce, shall I do that?

924 By Mr. BRUCE: I do not know to what papers Mr. Bradford refers. I have not seen them. I do not know whether they are papers that are in any respect private and that ought not to be put into a public record, but I do not at present see any objection to furnishing copies of those papers, and unless I conclude on an inspection of them they ought not to be put into a public record, Mr. Bradford will furnish copies of them.

31. Mr. Bradford, will you please be good enough to make copies

f such papers as you have referred to as being in your files, that ad you to believe that this is a Kentucky & Indiana Bridge Com- any connecting track, and submit them to Mr. Bruce to be filed fter his examination of them?

A. Yes, I will show Mr. Bruce the original papers, and if, in his dgement, copies of them should be filed with my deposition, I will o so.

32. Mr. Bradford, why did you mark the tracks around the Cen- al Stock Yards in yellow?

A. Because I understood that the Southern Railway Company uilt the tracks and that the tracks belong to the Southern Railway.

33. You don't know anything of your own knowledge
25 about that at all?

A. Just hearsay.

34. How much of the coloring of this map is from hearsay, so ar as it indicates the ownership of the tracks?

A. With the exception of the tracks belonging to the Louisville t Nashville Railroad Company, which are colored in red, and the rack in Ormsby Avenue which is partly colored yellow and partly ed, I don't know anything about the title of any of these tracks, xcept from hearsay. The red—I absolutely know we have title o the tracks represented by the red lines, and I know we have title o the Hub Track, in part, and Southern Railway, part. The bal- nce I don't know anything about the title to—have never examined he title.

35. All the other coloring on that map is altogether from hearsay nd not from personal knowledge to any extent?

A. Yes; that is as to the actual title of the property. I haven't xamined the deeds or anything of the kind.

36. Mr. Bradford, how did you arrive at that mileage which you gave in your direct examination—by actual measurement?

A. The mileage of the Louisville & Nashville was worked up from our maps and records that we have. The mileage for the
926 other roads was scaled from the Kentucky Title Company's map which I have found to be quite accurate as to scale.

37. But personally, you made no measurement yourself other than s worked out from maps heretofore prepared?

A. Well, the measurement on the Louisville & Nashville line was made under my directions in my office, and these records I refer to are records that are made from those measurements.

38. Where do you start from in your measurement from South Louisville to 7th and Magnolia, which I believe you said is 1.71 miles. At what point do you begin your measurement at South Louisville?

A. At the connection of the Louisville & Nashville main track with what we call the Louisville Railway Transfer track near P Street.

39. Then you begin in the vicinity of P Street at the switch on to which the cars pass after leaving the main line of the Louisville & Nashville Railroad going north?

A. At the connection of those two tracks—where they actually connect—those two tracks.

40. That is at the extreme southern point of the South Louisville yard, is it not?

927 A. No, that isn't the connection. The point of connection is at the north end of the South Louisville yards.

41. You say that is at what point?

A. In the vicinity of P Street.

42. How far is that from the point of connection of the old Louisville Railway Transfer Company with the Louisville & Nashville Railroad Company?

A. That is where the connection is.

43. That is the point of connection?

A. Yes, sir.

44. That is the point from which the measurement is made?

A. Yes, sir.

45. What character of track is that from that point just named last to 7th and Magnolia Street? Is that a terminal or the main line of the Louisville & Nashville?

A. It is the main line within the terminal limits.

46. The terminals of the Louisville & Nashville proper embrace a great deal of trackage not included within that distance from 7th and Magnolia to the point spoken of as the juncture of the tracks of the old Louisville Railway Transfer Company and the Louisville & Nashville?

928 A. Yes, we have terminals at 9th and Broadway, 10th and Broadway——

47. East Louisville and other points?

A. East Louisville and other points.

48. On the river front?

A. Yes, sir.

49. In arriving at the distance to the Bourbon Yards which you say is 3.94 miles—from what point is that estimated from?

A. It is estimated from the juncture of the Louisville Railway Transfer and the main line near P Street, up to the head block where it turns into the Bourbon Stock Yards near the letter B.

50. Now is there any measurement taken of the distance from that letter "B" at the block connection with the old Railway Transfer Company track, down to the chutes of the Bourbon yards?

A. No, sir.

51. You don't estimate that?

A. Never estimated that.

52. Do you have any idea of the proximate distance that is?

A. I think that track in there is about 800 feet long.

53. Isn't it true that the unloading chutes of the Bourbon are near the end of that track, at what is called the head of

929 Market Street?

A. The Bourbon Stock Yards extend out pretty well to those main tracks there. You go in and the unloading chute is to the right as you go into the yard, and I suppose about probably

three or four hundred feet from the junction point where they turn off to go into the yard?

54. To the first unloading chute?

A. I judge so. Yes, sir.

55. And then to the farthest or most westerly unloading chute it would be near 800 feet?

A. I ain't positive about that location there. It has been some time since I have been up there. I rather think they run beyond the unloading place.

56. You are not quite positive as to where the track connection with the chutes of the Burbon ends?

A. I know pretty near where the track ends, but I don't know where the loading chutes end. I remember the structure in general there, but don't remember it in particular.

57. Then when giving the distance as being 3.94 miles from the South Louisville break-up yards to the Bourbon Yards, what
930 you really meant to say, if I understand you now correctly, was that is only the distance from the point of juncture of the Louisville & Nashville and Louisville Railway Transfer track in the South Louisville yards, to the point of juncture or point of connection with the track leading into the Bourbon Yards?

A. Yes; that is it.

58. So in fact the distance is 3.94 miles plus whatever the distance is from the point of connection with the track leading into the Bourbon Yards down to the chutes where the stock is to be unloaded, or westward to the chutes?

A. Yes, sir; I should say that is true.

Redirect examination by Mr. BRUCE:

59. Do you remember how the distance was arrived at in giving the distance to the Central Stock Yards: in other words, whether it took in the track that went in the Central Stock Yards?

A. I think the distance was taken to right at the yard—not into the yard.

60. To the connection with the track at the yard and not into the yard?

931 A. Yes, sir.

61. In preparing that map, as I understand you, you simply attempted to show the tracks as they lie on the ground without attempting to pass judgment yourself on the title to those various properties?

A. I know nothing about the title at all, except the title that is held by the Louisville & Nashville Railroad Company.

62. As to any contracts that may exist between the Southern Railway and the Kentucky & Indiana Bridge Company—you don't know personally anything about them?

A. No, sir.

WILLIAM J. DICKINSON, called on behalf of the defendant, being duly sworn and examined by Mr. Bruce, testified as follows:

1. Will you please state your name, age, residence, and occupation?

A. William J. Dickinson; fifty-one years of age; Louisville is my residence; occupation, third vice-president of the Louisville & Nashville Railroad Company.

932 2. Mr. Dickinson, what, in general, is the nature of your duties as third vice-president of the Louisville & Nashville Railroad Company?

A. I am in charge of the traffic department of the Louisville & Nashville Railroad Company.

3. A little pamphlet has been filed in this case by Mr. Spencer, an officer of the Southern Railway, which has been marked "Exhibit H. B. Spencer No. 1," and which purports to contain certain rules entitled "Per Diem Rules." Will you please examine that little pamphlet and state whether all of the printed matter in that book constitutes parts of the Per Diem Rules referred to?

Objected to by counsel for plaintiff. The book speaks for itself.

A. I have examined the pamphlet referred to and compared it with the Per Diem Rules as adopted by the American Railway Association, and find that the pamphlet in question contains more than the Per Diem Rules.

4. Where do the Per Diem Rules stop in that pamphlet filed by Mr. Spencer?

933 A. They stop at the bottom of page 6 after the words "treasurer of the Association."

5. Do you know what the balance of the printed matter in that pamphlet is?

A. The balance of the printed pamphlet contains instructions of the Southern Railway, the Northern Alabama Railway and the Augusta Railroad to their employés as to how they shall be governed as the result of the adoption of the Per Diem Rules.

6. Have you a copy of the Code of Per Diem Rules adopted by the American Railway Association, before you?

A. Yes, sir.

7. Will you please file that with your deposition, marking it "Exhibit Wm. J. Dickinson No. 1?"

A. Yes, sir; I do.

8. Mr. Dickinson, can you tell us what the cost of switching and transferring live stock cars from the Bourbon Stock Yards to 7th and Magnolia Avenue by the Louisville a- Nashville Railroad Company, is?

Objected to by counsel for plaintiff.

A. I can give you very closely the figures showing the actual movement expense, but I couldn't undertake to even approxi-
934 mate the expense of the switching including all items that should be taken into account in connection with that expense.

9. Will you give such items of the cost or expense as you can approximate?

Objected to by counsel for plaintiff.

A. Yes, sir. In order to give you that data intelligently, it is necessary for me to make a little explanation, I think.

10. Make whatever explanation you think proper.

A. This question of the expense of movement, or of switching, rather, came up in March last. The last returns of the cars of live stock which had actually been switched between our West End connections and the Bourbon Stock Yards were given for the month of February——

11. What year?

A. 1902. Those returns are prepared in the office of our Superintendent of Terminals from reports which are furnished to him by our yardmasters and interchange clerks. These returns for the month of February show every car of live stock that was han-
935 dled from each of our West End connections to the Bourbon Stock Yards, and they also show every car of live stock that was handled in the reverse direction—from the Bourbon Stock Yards to our West End connections. They show how long it took to make the movement from the different West End connections to the Bourbon Stock Yards, and in the reverse direction. They show the number of cars of live stock that were actually handled in that month. I examined those reports very thoroughly and very carefully, and the result of that examination showed that it took an average of 53½ minutes to make the run with live stock from the West End connections to the Bourbon Stock Yards. I didn't feel that I would be competent to testify to figures which had been prepared by some one else, without some verification, and I therefore undertook to go through the movements from the West End connections to the Bourbon Yards just as though I were a train-hand and were handling a car of live stock myself. Mr. Klein secured a switch engine. He and I went along with the switch engine. The entire crew which consists of the engineer, the fireman, the foreman of the switching crew and two switchmen, went along with us. We started at the point from which these switch engines usually
936 start when they are going to handle a car of live stock from these West End connections to the Bourbon Stock Yards; that is, a point some little distance north of Oak Street. They are working mostly right around there with switch engines, and when they are notified that a car of live stock is to be switched, they start from that point to whichever point the live stock is to be received from. We started from this point, I say, a little distance north of Oak Street. We went along till we came to 7th and Ormsby, which is the central point. The northern point from which we receive live stock is 10th and Oak; next comes 7th and Ormsby, and next, 7th and Magnolia. We picked up a car at 7th and Ormsby, which was the central point, and which we thought would give us the average time. We were about to start with that car after we had picked

it up, to take it to South Louisville and to the Bourbon Yards, but just as we were about to start we received the signal that our No. 7 which leaves Louisville at three o'clock was just starting out for Nashville. We both had to pass over the same track—our engine and this car and No. 7 both had to pass over the same track
937 from 7th and Ormsby to South Louisville. We couldn't interfere with the movement of the passenger train so we stopped until the passenger train got past; then we started. That stop necessitated a delay of about six minutes, I believe it was. We then started out. The track was clear. We went along until we got to a point a few hundred feet this side of South Louisville when it was necessary to make a switching movement in order that the engine might be in front of the car when it moved from South Louisville to East Louisville along the Railway Transfer. There is a switch of considerable length, some two or three hundred feet, this side of East Louisville, and the Engine, by certain movements, as you will understand, changed its position—by a little switching is put on the other end of the car, then backs up to South Louisville, and when it goes from South Louisville to East Louisville it is in front of the car just as it was in going from 10th & Oak to South Louisville. We went on without anything special happening until we got to East Louisville. When we got to East Louisville a freight train was switching on the very track we wanted to get on, and we had to wait until
938 that switching movement was through. We finally got to the Bourbon Stock Yards and it took us 50 minutes from the time that we left this point that I spoke of in the first place; a few hundred feet north of Oak Street, to the Bourbon Yards. I mention the interference with our movement—at 7th and Ormsby in the first place on account of the passenger train, and East Louisville in the next place—in order that you may understand what has to be encountered in the handling of live stock. It is not always a straight forward movement, and you may think 53½ minutes is rather a long time for the movement, but I wanted to verify that, so I undertook to make the movement myself with the car just as though it were a car of live stock, and it took 50 minutes, and this was a sufficient verification of the figures which I found in the report on file in Mr. Klein's office, as to the average time required to make this movement.

12. Before going further, you have spoken of West End connections: Are the West End connections to which you have referred those three you have mentioned, namely, 7th and Magnolia, 7th and Ormsby and 7th and Oak?

A. Yes, sir.

13. Do you know which of those is called the "Hub Track"?

939 A. Yes, sir, 7th and Ormsby.

14. That is the middle one?

A. Yes, sir.

15. Proceed with your answer.

A. I was going to say that by the Hub Track we interchange with the Illinois Central and Louisville, Henderson & St. Louis Road.

16. Proceed with your previous answer.

A. These reports for the month of February show that there were switched from the West End connections to the Bourbon Yards 255 cars——

17. During what period of time?

A. During the month of February.

18. 1902?

A. Yes, sir—and that there were switched from the Bourbon Yard to the West End connection 29 cars in the same month, making a total of 284 cars switched in the month of February, 1902. We received for this switching service performed one dollar per car. That gave us a total revenue in the month of February, from this source, of $284.00. When we come to the expense side, the reports
940 to which I have previously referred show that in order to handle the 255 cars from the West End connections to the Bourbon Yards it was necessary to make, and there were actually made 126 runs. Sometimes they took one car—I have got an analysis here——

By Mr. Dodd: If you have a report, file it and it will explain itself.

A. I was simply going to show how it was that the number of cars handled was so largely in excess of the number of runs made. It is explained by the fact that sometimes there are more than one car handled at a time. There were runs made containing one car; there were runs containing two cars, three cars, four cars, five cars, six cars, seven cars, eight cars, nine cars, thirteen cars and fifteen cars. There were eighty runs made of one car; thirty runs made of two cars; fifteen runs made of three cars, and so on; only one made of fifteen cars. The number of runs made from the West End connections to the Bourbon Yards was 126. The time actually taken in making these runs was 6741 minutes, or an average of 53½ minutes per run. For every run to the Bourbon Yard there was a corresponding run back from that Yard to the starting point; and at this
941 point perhaps I ought to explain that when an engine goes from the West End connections to the Bourbon Yards with one or more cars of stock, it usually runs back from the Bourbon Yards to the starting point light; that is, without any load. Whenever a car of stock is to be handled in the reverse direction—from the Bourbon Yards to the West End connections,—it is usually the Easy Louisville switch engine which handles that load. It would be a coincidence if a load happened to be ready to be taken from the Bourbon Yards to the West End connections just at the exact time that a switch engine reaches the Bourbon Yards from the West End connections. It scarcely ever happens, so as a matter of fact, the East Louisville switch engine is used for the movement of stock from the Bourbon Stock Yards to the West End connections, and the 10th Street yard engines are used for the movement in the reverse direction. The return run, on account of not having to pick up the stock and not having to perform certain switching movements which are

necessary on the going trip—such as that switching movement I have referred to which is necessary to get the engine at the proper end of the car, after picking up the stock—on account of not having
942 to perform certain switching movements necessary on the going trip, the return trip takes less time than the going trip. While we have nothing to show just exactly the length of time taken on the return trip, we have thought that if the average time was 53½ mintues on the going trip, including the various switching movements, 45 minutes would be a reasonable time to estimate for the return trip. If on the return trip the engine could return without interference, wasn't stopped by the movement of other trains, it possibly could be made in less than 45 minutes, but I suppose it is very seldom that there isn't interference of one kind or another. Estimating 45 minutes per trip or run on the return. 126 runs at 45 minutes per run equals 5670 minutes. 5670 minutes added to the 6741 minutes of time taken on the going trips makes a total of 12,411 minutes or 206 hours and 51 minutes.

A switching day consists of 11 hours; that is the engines and switching crew are actively worked, in motion, 11 hours; and every time a car is switched the entire switching crew goes with it; that is the engineer, the fireman, the foreman of the switching crew
943 and two switchmen, or five men—every time there is a movement, whether it is one car, whether it is two, or more. As a switching day consists of 11 hours, and the time consumed during the month of February in handling all the cars, that is, from the West End connections to the Bourbon Yards, was 206 hours and 51 minutes, this time divided by 11 would give the number of switching days devoted to this service. Dividing the 206 hours and 51 minutes by 11 gives 18.8 switching days. It was necessary that I should know the number of switching days, because I shall give next the wages of the engineer, fireman, foreman and so on for a day.

The first item of expense that I have is that of wages. The engineer gets three dollars per day of 11 hours. The fireman, $1.50 per day; foreman of the switching crew, $2.70; each of the switchmen, $2.30, making a total wages per day of $11.80. 18.8 switching days at $11.80 per day equals $221.84. That was the amount paid out in the month of February, 1902, as wages of crews handling live stock.

In addition to wages we have sundry other items which can be figured down with reasonable closeness: that of fuel, for instance; oil and waste; water supply; locomotive expenses and locomotive repairs. The records of the Company show that the fuel costs
944 31.52 cents per hour; the oil and waste costs .75 of a cent an hour; water supply 2.12 cents an hour; locomotive expenses 4.10 cents an hour; locomotive repairs 36 cents an hour, making a total expense per hour of 74.49 cents: and for 206 hours and 51 minutes, which was the total time taken up on the going trips, at 74.49 cents per hour would equal $154.08.

I have taken into consideration in addition to the items mentioned, the interest on the value of the switch engine, but I think the figure that I have here is entirely too low. I believe in that you

will agree with me. I figured on the value of a switch engine at $8500.00. The interest on that valuation at six per cent. for one year is $510.00. The interest for 206 hours and 51 minutes, the time during which the switch engines were handling live stock in the month of February, at that rate, is $12.04. Now, I don't think that $12.04 is a reasonable amount for the use of a locomotive for 18.8 days. I figured it on this basis of six per cent. because, in some instances, we rent locomotives on that basis; but what we rent
945 locomotives for and what they are worth to us are two entirely different questions, but I put it at this low figure in order to be conservative—didn't want to go beyond the mark—I would rather be below it. I think, however, that a moderate rate or charge for the use of the engines a day would be $5.00, and instead of that being $12.04, on the basis of $5.00 a day for 18.8 days it would be about $94.00, and I think that would be more like it than $12.04. That represents the movement from the West End connections to the Bourbon Yards, including the interest on the value of the switch engine.

19. What do those three items which you have mentioned amount to now; that is, the wages——

A. The wages, the fuel, oil and waste, the water supply, the locomotive expense and locomotive repairs amount to $375.92.

20. And that interest amounted to $12.04?

A. Interest $12.04. That would bring the amount up to $387.96.

21. That represents, as I understand, the movement going from the West End connections to the Bourbon Stock Yards?

946 A. Yes, sir.

22. Now, proceed as to the movement in the other direction.

A. With reference to the movement in the reverse direction, I find from the Company's records that there were 19 runs made from the Bourbon Yards to the West End connections in the same month; that is February, 1902. The actual time consumed in making those 19 runs was 896 minutes or 47 3/19 minutes per run. The return movement, that is, the movement in going back from the West End connections to East Louisville I have estimated at 45 minutes the same as I did when speaking of the movement in the reverse direction. The return movement I have estimated at 45 minutes. that gives a total for the 19 runs of 855 minutes, and the total time going and coming would be 1751 minutes or 2.65 days of 11 hours. Wages being $11.80 per day as previously shown, would amount, for 2.65 days to $31.27. The expense 74.49 cents per hour would amount to $27.74. The interest o ne locomotive at six per cent., figured as before, would be $1.70. That would make a total movement expense from the Bourbon Yards to the West End connections, of $54.71, which amount added to the $387.96, the
947 movement expenses in the reverse direction, gives a total movement expense of $442.67. This was the expense incurred in handling 284 cars, so the expense of handling one car would be $442.67 divided by 284 or $1.55 8/10.

I would like to explain in connection with this movement expense that this estimate—it can only be called an estimate, although it is figured down pretty closely—I wouldn't like to say the figures were absolute, but they are as close as can be gotten—and this estimate simply shows the minimum of the movement expense under the most favorable conditions. The figure which I have given doesn't purport to show the entire expense incident to the movement of these cars of live stock. I have simply taken those items which can be gotten at with a reasonable degree of exactness, and which could be properly apportioned to this expense of handling cars of live stock; But there are a very large number of expenses which it is utterly impossible to apportion. I will cite a few of those in order that you may see just what the situation is: In the first place, the roadway and the track is worth something—the ties and rails, and so on and so forth. There is not a cent in this figure which I have given, for interest on the cost of the roadway and the track. Now our
948 main line, that is, to South Louisville, is assessed—and possibly beyond, but I know within the terminal limits—to South Louisville our main line is assessed at $40,000 per mile. The Railway Transfer from South Louisville to East Louisville is assessed at $34,000 per mile. Part of the interest on the $40,000 for the main line and the $34,000 for the Railway Transfer is chargeable to this service of switching cars of live stock, but we don't know how to get at it. We can't divide the thing up so as to determine just how much should be charged to this expense of handling live stock. That is one item. Another one is the item of taxes. Taxes are very heavy, and particularly in the City of Louisville, but I wouldn't know how to ascertain how much of the taxes we pay to the City of Louisville should be charged to this particular service.

Then again, there is a proportion of the terminal expenses—expenses at the terminal offices—the President, Vice-President, General Manager, the Traffic Manager, General Passenger Agent, General Freight Agent and so on and so forth—a part of their salaries and expenses ought to be charged to this service, but it would
949 be impossible to determine what the amount should be.

In addition to that, no allowance is made for idle time. By "idle time" I mean this: These engines which switch cars of live stock from the West End connections to the Bourbon Yards are located a greater part of the time in what we call the 10th Street Yards, moving around there doing switching of one kind or another—breaking up trains—making up trains—and directly word is given that a car of live stock is to be switched from any of these points of connection with connecting lines, to the Bourbon Yards, the engine has to cease what it is doing right away on account of the handling of live stock being given preferred attention. If it is in the middle of breaking up a train, in the middle of making up a train, it stops that work. It takes some time to stop it—to cut loose from the train—to get everything in proper shape to be left. There is a certain amount of idle time which should be taken into account and which should be charged as a part of this expense, but which we

cannot approximate. We don't know what it would be in dollars and cents. In the next place nothing is allowed for risk. There is risk to the live stock which we are handling. There is risk
950 to the equipment and risk to the employés as we go along. An accident might happen which would cost thousands of dollars, as you know. In considering what should enter into the expense of the switching of cars of live stock, undoubtedly the element of risk ought to be taken into account.

In the next place, no allowance is made for profit.

In the next place, no allowance is made for many other operating expenses which are necessary, directly or indirectly, but which cannot be apportioned, and which I don't know that I could state off-hand. I have simply mentioned the principal items that occur to me, which should be considered in connection with the expense of this movement and which cannot be apportioned and expressed in dollars and cents.

23. Is there anything included in your estimate for the cost of maintenance of either the main line track or the transfer track?

A. No, sir. Cost of maintenance—that is an item that I overlooked. Cost of maintenance, in addition to those I have already given, ought to be included. No provision is made for it.

24. Now, has the Louisville & Nashville Railroad Company
951 an agent in charge at South Louisville—at its South Louisville yards?

A. Yes, sir.

25. Has it one at East Louisville where the Bourbon Stock Yard is situated?

A. Yes, sir.

26. Has it an agent at 7th and Magnolia?

A. I think not; I think there is an interchange clerk there—I don't know what you call him—"agent" or "interchange clerk;" at any rate, there is an employé there.

27. Do you know whether there are subordinate agents at East Louisville and South Louisville under the agents?

A. There are other employés. I don't know the number of them.

28. Do those men have duties to perform in connection with this matter of handling or switching live stock?

A. Yes, sir; they have more or less to do in connection with it.

29. Is there anything included in the figures you have given representing a part of the wages of those men?

952 A. No, sir.

30. Then Mr. Dickinson, do I understand the figure which you have given of one dollar and fifty-five and eight-tenths cents per car as representing, in your judgment, the cost of switching and transferring these live stock cars between the Bourbon Stock Yards and the West End connections?

A. No, sir; not near the cost.

31. Is it simply an estimate of some of the items of the cost?

A. Just an estimate of some of the items which can be apportioned.

32. You spoke of the element of risk a moment ago. Do you know how damages which a railroad company is compelled to pay out for injuries to persons or employés or property in the operation of a road are charged by the railroad company generally—to what heading?

A. The loss to anything that is in the cars is chargeable to an account on our books known as "Loss and Damage."

33. Well, in speaking of a more general heading, do you know whether or not damages that are paid out in the course of the operations of a railroad company are charged to Operating Ex-
953 penses?

A. Yes, sir, they are.

34. And suppose the damage occurs in the course of work being done in the maintenance of a road. Do you know whether or not that is charged to Cost of Maintenance?

A. I don't know which account. I simply know it would be charged to Operating Expenses. We have so very many of those accounts, and I am not specially versed in them.

35. It would be charged to——

A. It would be charged to Operating Expenses, and a part of any expense of that kind would properly be chargeable to this switching service.

36. Then, if in operating one of these engines hauling a load of live stock, you should happen by accident to kill somebody in making the run from South Louisville to the Bourbon Stock Yards, would that, or not, according to the custom and practice among railroad companies be charged as a part of the cost of operation in that matter?

A. Yes, sir, it would.

37. Mr. Dickinson, please explain, in view of your testimony here, how the railroad company gets compensation for the
954 service which it does in switching and transferring between East Louisville and South Louisville, or for any switching or transfer service of this kind?

A. It certainly doesn't get its compensation in the shape of this dollar a car which is charged for the service. The switching charge is merely nominal, and the Company gets practically its entire compensation from the fact that the performance of the switching service attracts to it other business.

Cross-examined by Mr. J. C. Dodd:

38. Mr. Dickinson, who fixes the switching charge—does the party who desires the service rendered fix it, or the Railroad Company?

A. The Railroad Company, sir.

39. Mr. Dickinson, would it not be as practicable to demonstrate that there was an actual loss on the part of the Louisville & Nashville Railroad Company for switching to any industry, in the manner as you have undertaken to demonstrate the loss in the switching service of live stock to the Bourbon Yards; for instance, could
955 you not as well show from like reports that you lost money in switching to the Ballard & Ballard Company Mills?

A. Yes, if we get nothing out of it but the switching service to the Ballard Mills, but we count on getting considerably more than the switching service from the Ballard Mills. We count on getting their business in over our line and out over our line, and we could afford to do the work of switching to the Ballard Mill in view of the revenue we get from hauling their business over our line.

40. Don't you know it to be a fact that the switching charge was reduced by one-half on an average after the opening of the Central Stock Yards, by the Louisville & Nashville Railroad Company, and that its charges theretofore were two dollars instead of one?

A. There was a reduction in the switching service charge, but I don't recall the exact date.

41. Mr. Dickinson, which would represent the greater cost to the Railroad Company rendering the service, being a switching service—to move a car over one continuous, straight track 1.71 miles, or to move a car over three or more tracks a distance in excess of 3.94 miles?

956 A. Well, I am not a transportation man, and I am not an expert, but my judgment would be that it would be less expensive to handle it over the straight track than over the several tracks, but my judgement in that matter is not worth any more than yours would be.

42. Well, you have undertaken to show what should be chargeable as compensation for service rendered where the service began at one point and moved over two or three different switches or tracks. Could you not as well and as capably state what it would be to move over any one of those tracks, and wouldn't your judgment in that regard be as good as your judgment in the aggregation of three tracks?

A. I don't know whether I catch your idea, or not, exactly. Do you mean—is it your idea to split up this expense still further as between different parts of the track?

43. No, sir; my idea is to get from you as an expert whether it would cost the Louisville & Nashville Railroad Company more to make a delivery say from South Louisville to 7th and Magnolia, than from one of the three points which you have mentioned, to the Bourbon Yards via the route that you have traveled on the engine and that you say you actually went over for the pur-

957 pose of getting the experience and knowing the facts personally. Which would be the most burdensome to the Louisville & Nashville Railroad Company?

A. Between South Louisville and these points of connection, you say?

44. From South Louisville to 7th and Magnolia as compared with from 7th and Magnolia and the other two points you mentioned—the Hub Track and one other—you mentioned three points—from those points to the Bourbon—which would be the most burdensome and occasion the greatest amount of time and expense to the Louisville & Nashville—the one movement as compared with the other?

A. That is purely a transportation question and one I don't feel competent to answer. I don't know what interference it would cause to other traffic if it were handled exclusively between South

Louisville and this point you speak of. You might ask some of our transportation men as to where is the most interference, and between which points they would prefer to handle it, and you can get at it better than from me, because I am really not in a position to advise.

45. In moving live stock, with respect to which you have
958 been testifying, from either one of the points you mentioned which you called "West End connections," to the Bourbon Stock Yards, isn't it absolutely indispensable that that traffic must to some extent pass over the main line of the Louisville & Nashville between 7th and Magnolia and South Louisville?

A. Yes, sir.

46. If there are interferences in moving the traffic from either one of these points or connections in the West End and carrying it to the Bourbon Yards, the same interferences or the same causes of interferences would exist in moving it northward on the same track as there would in moving it southward on that track, would there not?

A. Yes, sir.

47. Added to the interferences that would thus be occasioned in moving over this track from 7th and Magnolia to South Louisville, you have, in moving to the Bourbon Yards, if I understand you correctly, another interference as experienced on the occasion to which you have referred, namely, finding a train in actual operation in doing switching at East Louisville?

959 A. Yes, sir.

48. To which you had to yield the right of way and await its convenience to get the use of the track?

A. Yes, sir.

49. That would not and could not be experienced if you only used the track from South Louisville to 7th and Magnolia, could it?

A. Not that particular interference.

50. That particular interference I refer to—the East Louisville interference?

A. No, sir.

51. You have then in the live stock traffic, from a point of connection of the tracks of the Louisville & Nashville with the roads in the West End—to be moved to the Bourbon Stock Yards—a possible interference in excess of any interference that there could be in moving it from South Louisville to 7th and Magnolia?

A. Well, of course, the greater the distance the stock travels, the greater the probability of more interference.

52. In the same proportion as the greater the interference would likewise be the greater the time consumed—the greater cost
960 in the time of the employés rendering the service, and all the items of expense to which you have referred. That would follow necessarily, would it not?

A. It would cost more for the greater distance than for the less.

53. It is a fact that you know, is it not, that there is quite a volume of interchange traffic at the 7th and Magnolia connection, one of the West End connections to which you have referred, is there not?

A. Yes, sir.

54. That interchange is not confined to any class of traffic, is it?

A. We interchange at 7th and Magnolia with the K. & I., the B. & O. S. W., C. I. & L. and the Southern Railway, and that interchange includes, I believe, all classes of business—live stock—merchandise.

55. Whether the movement is of freight from either one of these points—coming from one of the roads which you have just mentioned or at the other point and coming from the Illinois Central or the Louisville, Henderson & St. Louis, which is at the Hub Track, as I understand you—if it is going to an enterprise
961 or an industry on the line of the Louisville & Nashville Railroad Company and within the switching limits it is carried indiscriminately and without preference to the one as against the other in so far as dead freight in itself is concerned?

A. So far as the dead freight is concerned, yes. It is the live stock that is given the preferment and the preferential handling.

56. Live stock is to some extent, is it not, in the nature of perishable freight?

A. Yes, sir.

57. And is it not for that reason and that reason alone that it is given preferential movement?

A. Well, that is one feature which makes it necessary to give it preferential handling, but there may be other considerations. There may be market conditions which make it important that it shall reach a certain point at a certain time.

58. Supposing, Mr. Dickinson, that dead freight comes from a non-competitive point over the Illinois Central Railroad, for instance, destined to W. B. Belknap & Co.: Where would the Louisville & Nashville Railroad Company receive that car-load
962 of dead freight, say nails or hardware, and to what point would it carry it for delivery?

A. It would receive it at the same point of connection, 7th and Ormsby, at which all business is received from the Illinois Central—I am not so sure of that—it can come by way of the Short Route—be delivered to us—pas- through the 7th Street Depot and over the trestle-work—I am not altogether sure whether it would be delivered to us by the Illinois Central by way of the Short Route or at 7th and Ormsby.

59. Suppose it came from the Chicago, Indianapolis & Louisville?

A. Well, if from the C. I. & L. it need not necessarily have to go all the way round—if it came from the C. I. & L. it could come by the Short Route just the same, and the I. C. get their switching charge.

60. What would be the movement if it came from a point on the Louisville, Henderson & St. Louis—where would that go?

A. Well, I suppose that would go around in all probability. I am not sure as to the direction which any of this business takes; I am not sure which of it passes over the Short Route, and
963 which of it moves in the same direction as the stock would move.

61. Well, independent of the route it might take, whether around on the southern limits of the city, or over the Short Route elevated road on the river front, it is a fact, is it not, that with respect to all dead freight coming to an enterprise located on your lines in the City of Louisville, over another railroad and from a non-competitive point, the Louisville & Nashville handle it to that point for delivery?

A. Yes.

62. Now, when it comes to Belknap, for instance, why is that service rendered to Belknap for a dollar when Belknap in the extent of their business, ship out over every road entering the city?

A. Because we get a sufficient amount of revenue out of business which we handle for Belknap & Co., in-bound and out-bound, to amply repay us for switching cars such as you refer to, for a nominal sum.

63. Does that apply to every other industry on your tracks?

A. Any industry that amounts to anything.

64. You don't mean to say by that, that the quantum of
964 business done by an enterprise located within the city of Louisville, and on your line, determine whether or not you will handle that business?

A. Nor at all, sir.

65. It isn't then the quantum of business that you bring in or the quantum you take out that determine- whether you will render the switching service?

A. No, sir, not figured out to a nicety, but we count on getting the revenue in that way.

66. But you render the service to all alike, so far as to switching to an industry on your line?

A. Yes, sir.

67. And that switching service which you render is at a rate of compensation wholly determined by the railroad?

A. Determined by the railroad—but it isn't compensation.

68. Whatever you may call it?

A. We don't consider it compensation.

69. Whatever charge you make for it is at the election and the determination of the railroad, and not participated in by the party for whom the service is rendered, in the fixing of the rate?

965 A. No, sir.

70. They have no voice in that. Now, what is true with respect to switching by one road, under like circumstances is equally true with respect to every other railroad, isn't it? That in and of itself, segregated from other service rendered, it isn't upon a compensatory basis, but is for the purpose of adding to the volume of traffic: Isn't that true?

A. Yes, sir.

71. That is the whole idea that dominates railroad management?

A. Yes.

72. For any business that may come over your lines—meaning by "your lines" the Louisville & Nashville, of course, that they deliver to the Southern Railway at 7th and Magnolia Street for delivery by the Southern Railway at the Central Yards, isn't it a fact

that the Louisville & Nashville in that case gets its full Louisville rate?

A. I presume it does.

The further taking of depositions was adjourned until 4 P. M. of the same day (March 5, 1903), at the same place.

966 At 4 P. M., March 5, 1903, met pursuant to adjournment.

MARK H. GABHART, called on behalf of the defendant, being duly sworn and examined by Mr. Bruce, testified as follows:

1. Please state your name, age, residence and occupation.

A. Mark H. Gabhart; twenty-four years old; 1522 Dumesnil Street, Louisville, Ky ; occupation is interchange man for the L. & N. at 7th and Magnolia.

2. In your duties as interchange man for the Louisville & Nashville Railroad at 7th and Magnolia, do you keep any record of the time that cars are delivered by the Louisville & Nashville Railroad Company to the Southern Railway, or by the Southern Railway to the Louisville & Nashville Railroad Company at that place?

A. Yes, sir.

3. How long have you been engaged as interchange man at that point?

A. Four years last month.

4. You have been there then continuously since November 1st, 1901?

A. Yes, sir.

967 5. Do you stay there all the time or do you exchange with somebody else part of the —?

A. I stay there all the time from 6 A. M. to 6 P. M., and then the night man comes on at 6 P. M. and stays until 6 A. M.

6. In what form do you keep the records showing the time of delivery of cars at that place? Do you keep it in books?

A. In book form—yes, sir.

7. Who makes the entries in those books?

A. I make them by day and the other gentleman makes them by night.

8. Has that been your practice continuously since November 1, 1901?

A. Yes, sir.

9. Are the entries which you have made in those books correctly made?

A. Yes, sir—intended to be correct.

10. Are correct, so far as you know?

A. So far as I know—yes, sir.

11. Do I understand then that the entries in those books are all either in your handwriting or the handwriting of the other party to whom you have referred since November 1st, 1901?

968 A. Yes, sir.

12. In your records do you show the number of the car that is delivered as well as showing the date of delivery and receipt?

A. Yes, sir.

13. Do you show also whether it is loaded or empty?

A. Yes, sir.

14. Have you those records here with you—those books?

A. Yes, sir.

15. Have you lately made an examination of your books and a statement from your books showing the time at which all live stock cars delivered by the Louisville & Nashville Railroad Company to the Southern Railway Company at 7th and Magnolia, were in fact delivered, and the time at which such cars were in fact returned by the Southern Railway to the Louisville & Nashville Railroad Company, and whether loaded or empty, for the period from December 1st, 1902, to January 31, 1903?

A. I have made such a statement containing cars that come in off of our road only. This statement does not contain cars that are shipped from the Bourbon to the Central.

16. That, you mean, is a statement showing cars that have
969 come into Louisville over the Louisville & Nashville Railroad, and have been delivered by the Louisville & Nashville Railroad to the Southern Railway at 7th and Magnolia?

A. Yes, sir.

17. And afterwards returned at that point?

A. Yes, sir.

18. Does it refer simply to Louisville & Nashville Railroad Company's cars?

A. Yes, sir.

19. You say you have such a statement?

A. Yes, sir.

20. Is the statement that you have a correct statement from your books showing what you have described it as showing?

A. Yes, sir; it is.

21. I will ask you to file that with your deposition and mark it "Exhibit Gabhart No. 1?"

A. I do.

22. What do you treat as a delivery by the Louisville & Nashville Railroad Company to the Southern Railway at which you take the time as being time of delivery?

A. When cars are placed on the K. & I. main track, as we
970 term it.

23. At 7th and Magnolia?

A. At 7th and Magnolia—yes, sir—between 7th and 12th.

24. In other words, when the Louisville & Nashville Railroad Company places a car on the K. & I. track at 7th and Magnolia, you treat that as the time of delivery?

A. Yes, sir.

25. Then what did you treat as the time of return of a car by the Southern Railway to the Louisville & Nashville Railroad Co.?

A. When cars are placed on the east end of what we term the K. & I. siding; that is, the track next to the main track—south of the main track, I might say.

26. You mean south of the main track of the K. & I.?

A. South of the main track of the K. & I.—yes, sir.

27. Then, if, after a car is thus placed on that siding there is any delay on the part of the Louisville & Nashville Railroad Company in removing that car, do you charge that up to the Southern Railway?

A. No, sir; we charge that to the L. & N.

971 28. I notice in the last column of your statement just filed as exhibit "Gabhart No. 1," you have days and hours in parenthesis. What is indicated by the days and hours you have in parenthesis there?

A. That is the length of time the car was in possession of the Southern.

29. Well, what is the shortest time which the Southern Railway during the period covered by this statement, held one of these live stock cars of the Louisville & Nashville Railroad?

A. One hour and 25 minutes.

30. And what is the longest time?

A. One day and 12 hours.

31. By a day, you mean 24 hours?

A. 24 hours—yes, sir.

32. Do you remember having testified in a hearing between the Railroad Commissioners of Kentucky and the Louisville & Nashville Railroad Company before the Interstate Commerce Commission in the City of Louisville, with reference to this matter of the Central Stock Yards?

A. Yes, sir.

33. Do you remember whether or not at that time any question came up about the length of time that the Southern Rail-

972 way held cars, and whether you were examined on that subject at *taht* time?

A. Yes, sir.

34. Do you remember when that meeting was held?

A. I think I do—yes, sir.

35. About what time was it?

A. About the 5th of April.

36. Of last April—1902?

A. Yes, sir.

37. Did you or not, at that time make a statement from your books, of similar character to the one that you have just filed, but for the period of time running from November, 1901, down to April, 1902?

A. Yes, sir.

38. Have you again made a statement from your records showing the length of time that cars of the Louisville & Nashville Railroad Company were held by the Southern Railway—that is, live stock cars of the Louisville & Nashville Railroad were held by the Southern Railway—between November 1, 1901 and April 4, 1902?

A. Yes, sir; the statement runs from November 24, 1901 to April 4, 1902.

973 39. Is or not that statement made up in the same way and to show the same things, except as to the period of time covered by it, as the Exhibit Gabhart No. 1 which you filed just a moment ago?

A. Yes, sir.

40. And are the times of delivery and receipt as referred to in this second statement the same as those referred to in the first statement; that is, I mean, do you——

A. Of the same character—yes, sir.

41. I will ask you to file this statement with your deposition as "Exhibit Gabhart No. 2"?

A. I do.

42. What character of cars does this second statement cover?

A. L. & N. cars.

43. Are they only cars brought into Louisville by the Louisville & Nashville Railroad Company?

A. Yes, sir, cars originating on our road.

44. Just as in case of the first statement?

A. As in the first statement—yes, sir.

45. Is it or not true that as to the period covered by this Exhibit No. 2 cars were frequently held by the Southern Railway for periods of more than a day?

A. Yes, sir.

974 46. If you can tell quickly by glancing over this statement, what was the longest period of time shown in that statement, or within the period covered by that statement, that the Southern Railway held a car of the Louisville & Nashville Railroad Co.?

A. Twelve days.

47. Have you or not made a statement from your books showing the cars delivered by the Louisville & Nashville Railroad Company either to the Southern Railway Company or to the K. & I. Bridge Company at 7th and Magnolia Avenue for industries or sidings on the line of the K. & I. Bridge Company or the Southern Railway Company between December 15, 1902 and January 15, 1903, meaning thereby cars other than live stock cars and showing the times at which they were delivered and the times when they were returned?

A. I have—yes, sir.

48. Will you please file that statement with your deposition and mark it "Exhibit Gabhart 3."

A. I do.

49. Can you tell and are you informed as to the cars which are delivered by the Southern Railway to the Louisville & Nash-

975 ville Railroad Company at 7th and Magnolia Avenue, as to what is the destination of those cars?

— Yes. sir.

50. Do you keep a record of that also?

A. Yes, sir.

51. Have you made a statement from your records showing the number of live stock cars which during the months of January and February, 1903, have been delivered by the Southern Railway, com-

ing from the Central Stock Yards to the Louisville & Nashville Railroad Company at 7th and Magnolia, to be carried by the Louisville & Nashville Railroad Company out of the City of Louisville?

A. I have made such a statement—yes sir.

52. How many such cars have been delivered during the months of January and February, 1903, by the Southern Railway to the Louisville & Nashville Railroad Company, coming from the Central Stock Yards to be carried by the Louisville & Nashville Railroad Company beyond the City of Louisville?

A. Three.

53. Have you that statement to which you referred, before you?

976 A. I have—yes, sir.

54. Will you please file that with your deposition marked "Exhibit Gabhard 4"?

A. I do so.

Cross-examined by Mr. J. C. DODD:

55. Mr. Gabhart, where do you make your original entries in these books showing the time of the return of the cars from the Central Yards where it has been delivered to the Southern for that purpose, meaning by that, do you wait until the car is brought to the east end of the connection between 7th and Magnolia and 12th and Magnolia, or do you take it as soon as it gets on the siding?

A. We accept cars from the Southern when they are placed on the siding at or near the east end or east of what are termed their team track cars.

56. Do you know how many of these cars mentioned in your statement "Gabhart No. 1" there were on the track connecting the Southern Railway Company's main line with the main line of the Louisville & Nashville Railroad Company, for a considerable length of time before you made a record thereof and before they were moved to the east end of that track connection?

977 A. I keep no such record—no, sir.

57. Who does keep any such record?

A. No one that I know of.

58. Who keeps any record there other than yourself of these cars?

A. The Kentucky & Indiana Bridge Company have a representative at 7th and Magnolia in the same capacity as I am.

59. Well, ought his statement to correspond with yours in date and time and number of cars?

A. It does, sir.

60. You say "it does." Have you examined his record to know that it does?

A. In this record taken from November 24, 1901, until April 4, 1902, you will find a difference possibly of a few minutes, and that is taken by the handling of the bills for these cars; say for instance, when that statement was made, or when those cars were handled he didn't accept the cars from me until I presented the bill, and *vice versa*—cars coming to the L. & N.; but at the present time we both

make—the time is the same, and that was done on account of the recent Per Diem Rules.

978 61. Mr. Gabhart, do you keep a record of the cars that are delivered to the Louisville & Nashville Railroad Company at the 7th and Magnolia Street connection, that are received by the Louisville & Nashville Railroad Company and carried to the Bourbon Yards, the same being Southern Railway Company cars and containing live stock?

A. Yes, sir, I keep such record.

62. Have you made out a statement showing the number of cars, their numbers, the time when they were delivered to the Louisville & Nashville Railroad Company for delivery at the Bourbon Yards, and the time intervening before they were returned back for delivery and delivered to the Southern at said point of delivery?

A. No, sir; I have made no copy of that.

63. Will you be good enough to make that record and file it with the stenographer and mark it "Exhibit Gabhart No. 5"?

By Mr. BRUCE: I instruct the witness that he is not called on to do that work for counsel, especially as the same information can be gotten from the representative of the Kentucky & Indiana Bridge Company who keeps a similar record.

979 64. I will ask you whether or not you will be good enough to make that record showing, as I have stated, the number of cars and the time consumed in carrying them by the Louisville & Nashville to the Bourbon Yards and returning the same cars back to 7th and Magnolia?

A. Well, in that case I will have to be guided by advice from our counsel.

65. And you decline?

A. I do.

66. Mr. Gabhart, you have filed as Exhibit "Gabhart No. 4" a statement showing the live stock received from the Central Stock Yards during the months of January and February, 1903, and destined to points via the Louisville & Nashville beyond Louisville, Ky. I will ask you if you will be good enough to prepare a similar statement showing the live stock received from the Central Stock Yards from November, 1901, down to January 3, 1903 or the beginning of this statement, where such live stock so delivered to the Louisville & Nashville Railroad Company from the Central Stock Yards was destined to a point via the Louisville & Nashville, beyond Louisville, Ky.?

A. Why, I am willing to make the statement for you, but it takes some time and while I was making such statement I would be compelled to have some one in my place to attend to the routine

980 work. As for making it, I haven't the least objection to filing any statement that any of you want.

67. Well, you had time to make these statements, didn't you?

A. I did by working two days and a half with another man in my place.

68. To the extent that there were cars as mentioned in these statements, received by the Louisville & Nashville Railroad Co., or by the

Southern Railway Company at this point of connection between the hours of 6 o'clock P. M. and 6 o'clock A. M. you know nothing of them except what you saw in the books, do you?

A. Well, not as a general thing, if you allow for a few nights that I may have worked. As a general thing, I know nothing of it only as I see it on the books.

69. What percentage of the cars—you could see as you were making up these statements—were intercharged at that point while you were on watch, as compared to the percentage of cars of which you saw the entries on the books and copied into these statements, the original entry of which was made by your relief assistant—how does that compare?

A. I have not compared that statement.

981 70. Well, what time are live stock cars more frequently interchanged there? After six o'clock in the evening until six in the morning, or between six in the morning and six in the evening? How is that? You certainly ought to know that in four years' experience.

A. Well, I am satisfied that we handle more in the day-time than we do at night, but as to the number or percentage, I don't feel qualified to say. It is all shown on my statements.

71. Mr. Gabhart, in your statement marked "Exhibit Gabhart No. 2" there appears as of date February 21, 1902, a certain L. & N. car numbered 19,749, which you say was delivered at 8 P. M. and was returned at 1.15 P. M. on the 3rd day of March, 1902. Are you quite sure that that entry is correct, and isn't it a fact that car was delivered to the Southern Railway on the 22nd of February, and not on the 21st?

A. I am quite sure it was delivered to the L. & N. at 1.15 P. M. March 3, 1902, but it might be possible that I have made a mistake, and that might be the second delivery to the L. & N. I will look and see. What did you ask me?

Question 71 read as follows: "Mr. Gabhart, in your statement marked "Exhibit Gabhart No. 2" there appears as of date

982 February 21, 1902, a certain L. & N. car numbered 19,749, which you say was delivered at 8 P. M., and was returned at 1.15 P. M. on the 3rd day of March, 1902. Are you quite sure that that entry is correct, and isn't it a fact that car was delivered to the Southern Railway on the 22nd of February and not on the 21st?

A. This is correct in reference to the Southern Railway—yes, sir. I mean this report is correct. (Referring to Exhibit Gabhart No. 2.)

72. If it should be shown that that was really received on February 22nd, would it not then appear that you are mistaken by a day, and isn't it possible that you are mistaken by a day with respect to a number of the entries?

A. I am inclined to think that I am not mistaken. If I had been I would have heard of it before this.

73. You speak of these delays; Isn't it a fact, Mr. Gabhart, that for considerable time covered by your Exhibit Gabhart No. 2, you

had instructed Mr. Ashcraft, the local agent of the Southern Railway Company at the Central Stock Yards, as well as Mr. Welsh, the foreman of the switching crew, to hold L. & N. cars at the Central
983 Yards where there was a prospect of getting a load out within a few days, and doesn't that account for the delays then being very much greater than for the time mentioned in your Exhibit "Gabhart No. 1?"

A. No, sir.

74. If Mr. Welsh and Mr. Ashcraft make any such statement, they are mistaken then, are they?

A. They are.

75. Who would be in the better position to know the requisite time required to take a car from 7th and Magnolia to the Central Stock Yards and bring that car back—you or the man who really operated the engine that carried the car to the yards and brought back the empty?

A. The man that takes the car there I would suppose would have a very good idea of the time consumed.

76. Don't you know that from December 19th last down to this time it has been the invariable rule of the Southern Railway Company to immediately take a car when delivered to it—offered to it at 7th and Magnolia, to the Central Stock Yards, and without detaching the engine therefrom, bring the said empty back within an hour from the time of the receipt of the same?

984 A. There never has been a car received by the Southern Railway and returned within an hour.

77. Don't you mean there never has been a record made by you of the placing of that car on the east end of the connection, within an hour—isn't that what you mean?

A. I mean that there never has been such a record made, nor they have never made any such record with the car and with the engine.

78. Do you mean to say that they have never placed it back on the switch, at the entrance to the switch from the Southern main line, within an hour's time?

A. I keep no such record and I don't think there is any one who does keep any such record.

79. If you keep no record of that, how do you know anything about the time required to bring that car back there: If you are not on the car or on the engine that really handles it—that carries the loaded car out and brings back the empty, how do you know that hasn't been done within an hour, and that the additional time as mentioned in your record was in the placing of the car at the east end of the connection at 7th and Magnolia after it had been
985 for several hours on the switch and west of the point at which you make the record?

A. I don't believe that.

8-. I am asking you what you know; I don't care for your belief.

A. I keep no record of the time cars are placed on the west end of this switch, but I would know if such cars were there, because

I am continually going up and down through the yard looking for the cars that have been delivered to the K. & I. and to the Southern, and for cars that have been delivered to the L. & N. from the K. & I. and Southern.

81. How often do you go to the connection between the track on Magnolia Avenue and the main line of the Southern—go that far west?

A. I don't know exactly how many times I go.

82. How often a day do you go down there to that end of the track, approximately—as an average?

A. I wouldn't like to answer. I won't guess at it. I don't know.

83. Do you go down there once a day?

A. I go down there more than ten times every day, but then I don't know the correct number of times.

84. You go more than ten times to the main line of the
986 Southern where the connecting track joins it from the east end?

A. Not the main line of the Southern—the switch connection with the K. & I.'s west track where cars are delivered to the L. & N.

85. How far west of the connection where cars are delivered, do you go?

A. 11th Street.

86. Are there any cars placed on the track between 11th and 14th?

A. I accept none there.

87. You see them there though, don't you?

A. I sometimes do see cars standing there.

38. Isn't it a daily occurrence there—every hour of every day you see them there?

A. Not every hour of every day—no, sir.

89. Is it uncommon or frequent that you see them there?

A. Cars are very often placed there by the Southern Railway, but scarcely L. & N. equipment.

90. Why are cars detained at that end, if they are detained
987 before they are brought up to the east end of that connection?

A. You will have to ask the Southern Railway. I don't know.

91. Isn't it true that the track is often found occupied with other cars, and they have to await the removal of those cars before they can place in those they have brought back from the Central Stock Yards?

A. I don't know whether they have ever detained any cars returning from the Central, or not, but it is a fact that the tracks are sometimes full, and they have to wait before they can make a delivery.

92. Such time as they may wait on occasions of that kind while the car is west of where you make a record of it, it is charged in detention?

A. Yes, sir.

93. And you don't know how much of the time according to your record, was really occupied in the car standing on the tracks west of the switch?

A. No, sir.

988 94. You don't know about that?

A. My record doesn't show that.

95. Then it might be true that the car was brought back within an hour, and yet not returned to the east end where you would make a record of it, within a day, is it not?

A. Never stands that long.

96. How long do they stand?

A. How am I to know that when I don't keep a record of it?

97. You say they don't stand a day: How do you know they don't stand a day?

A. Because they would have opportunity after opportunity to deliver the car to the L. & N. in that time, and I am quite sure they would do it to get rid of it.

98. You don't know anything about that—you just surmise that?

A. It is only surmise with me that they bring them back in that time.

99. The man that is in charge of the car is able to do more than surmise, isn't he?

A. No; the man who delivers the car reports the car delivered to the L. & N. when he delivers it at a point besides that at which we accept cars from them.

989 100. He does make that report, does he?

A. Yes, sir.

101. So his reports would differ some from yours?

A. Would differ from mine, because his would show delivered to the L. & N. when it is in reality in possession of the Southern.

102. Where would it be then during the time which is the difference between your report and his—where would that car be on the track connection between 7th and Magnolia and 14th and Magnolia?

A. I don't know where the car would be.

103. Well, could it be anywhere else unless it was in use by the Southern somewhere around in its switching vicinity?

A. It could be on several different side-tracks they have in that vicinity.

104. You speak of these detentions as shown from these statements. Have you ever made any complaint to the switching crew of the Southern Railway Company of the detention of cars?

A. No, sir; I have not.

105. Have you heard of any such complaint?

A. No, sir; I don't know that I have heard of any.

990 106. Has there been any complaint on the part of the Southern, of the detention of its cars at the Bourbon, so far as you know?

A. I know of no particular case—no, sir, only that I have had inquiries about cars that have been delivered to the L. & N. and taken to the Bourbon. I have had inquiries about the cars.

107. Don't you know now as the interchange clerk or employé or man there, that it takes longer for the Louisville & Nashville Railroad Company to receive a car from the Southern at 7th and Magnolia, and to find its way clear to get it around to East Louis-

ville or the Bourbon Stock Yards, and bring back that empty and deliver it to the Southern Railway Company, than it does to take from the same point a car over the Southern Railway Company to the Central Stock Yards, and return the empty back to the same point?

A. I know nothing of it. I am stationed at that point, and I do not follow the car up. I couldn't give you an answer that would be worth making.

108. Don't you keep a record of both directions?

991 A. I do, but I don't know whether the car has had any other service in either direction.

109. You mean the Southern car at the Bourbon or the Louisville & Nashville car at the Central?

A. I mean either way.

110. But you certainly know when it comes back whether it has been subjected to any other service, or not?

A. No, sir; I do not know.

112. Don't know when it gets back?

A. I know when the car is returned, but I don't know whether it has been held for any other service in the meantime.

113. Why was it when you were getting up this statement as you say from the original entries that were made in the books that were before you,—why was it you didn't show all the facts showing detentions of the Southern Railway Company cars in the delivery from 7th and Magnolia to the Bourbon Stock Yards, and the return of those cars back to the Southern or to 7th and Magnolia?

A. Because I was not instructed to.

114. You only acted then under instructions?

992 A. I certainly did, and do all the time in work.

115. You acted under the instructions in getting these statements up so as to present one side of the case and overlook the other?

A. I didn't get it up with any question as to what was going to be done with it at all. I was only told to get up the statements and I did so.

116. Why was it you made a report of the returned cars from the Central Stock Yards delivered to the Louisville & Nashville only for the months of January and February, 1903, instead of including all the time since the opening of the Central Stock Yards?

A. I made the statements under advice.

117. Well, who advised you to do that?

A. Counsel.

118. Was that advice after the books had been examined by counsel, or before?

A. These books you have referred to? (Referring to books in which entries were made by the interchange men.)

119. Yes, sir.

A. I do not know that they have ever been investigated by counsel.

993 120. Was the substance and the contents of those books explained to counsel before you got the instructions—ex-

plained to counsel as a reason for limiting the report of this interchange business there?

A. There was no specified time offered as to making a preferred statement.

121. Why did you begin then and take it only for January and February as a specified time?

A. I say as a "preferred" record. I certainly made the statement under instructions, and it was a specified statement for January and February. If I had been instructed to make it for any other two months, I would have done so.

122. There is an interchange, is there not, of cars between the Southern and Louisville & Nashville Railroad Company at 7th and Magnolia every day, isn't there?

A. Yes, sir.

123. Isn't it true that every day or practically every day Southern Railway Company cars containing live stock are turned over to the Louisville & Nashville at that point for delivery to the Bourbon Yards?

994 A. Deliveries of that kind are made to the Louisville & Nashville, but I wouldn't like to say it is every day.

124. But it is a frequent occurrence, is it?

A. Yes, sir; it is a frequent occurrence—yes, sir. I would much rather make that answer.

125. What time is allowed, if you know, for the unloading and return of a car containing dead freight—do you know—before they are charged demurrage or whatever may be the additional cost?

A. By the Per Diem Rules?

126. Yes, or whatever rules you operate under?

A. Four days.

127. What time, under the Per Diem Rules, is allowable for the unloading and return of a live stock car?

A. Same length of time.

Redirect examination by Mr. BRUCE:

128. Mr. Gabhart, referring to that statement "Exhibit Gabhart No. 4," showing the cars that were delivered to the Louisville & Nashville Railroad coming from the Central Stock Yards and going to a point beyond Louisville on the Louisville & Nashville, is it or not true that that statement has been prepared since you first came to this office this morning?

995 A. Yes, sir.

129. Is it or not true that after we took an adjournment of the depositions in the forenoon that you and I were conversing about this subject-matter, and question of the number of cars delivered by the Southern Railway to the Louisville & Nashville to points beyond Louisville, came up, and I then asked you if you could make a statement for the deposition this afternoon, showing the number of cars that had been delivered since the 1st of January?

A. That is correct—yes, sir.

130. And you then said you could make it up and would make it up for the months of January and February?

A. Yes, sir.

131. And you were endeavoring to get up a statement that could be used this afternoon?

A. Yes, sir.

132. Now, as to this point of delivery from the Southern Railway to the Louisville & Nashville Railroad Company, is there or not a certain place out there near 7th and Magnolia where both Railroad Companies recognize that the Louisville & Nashville Rail-
996 road Company receives cars from the Southern Railway?

A. Yes, sir.

133. And is it, or not, the time of delivery at that place which you take and of which you make a record, and to which you have testified?

A. Yes, sir.

134. Does it concern if the Southern Railway has a car at some other point on its line which is not recognized by the two companies as a delivery point?

A. Does not concern me—no, sir.

135. And you make no record of that?

A. No, sir.

136. Is it or not true as heretofore testified, that there may sometimes be other cars on the track which would be between the eastern end of that side track and the western end of it, and which would prevent the Louisville & Nashville Company from running up there and getting those cars, even if — wanted to?

A. Yes, sir.

137. And as I understand from you then, there is a designated place which the two companies recognize as a point of delivery?

A. Yes.

138. And it is the time of delivery at that point of which
997 you take the record?

A. At that point and none other.

139. Some reference has been made in the course of cross-examination to communications between you and Mr. Ashcraft about holding cars, from which an implication may possibly be drawn that there is an expectation of calling on Mr. Ashcraft in this case as a witness. Will you state what, if anything, occurred between you and Mr. Ashcraft on this subject of holding cars?

A. I have never requested Mr. Ashcraft or any one as to that matter, to hold cars where the holding of cars would amount to more than one or two hours.

140. What did ever occur between you and him on that subject?

A. Mr. Ashcraft has several times called me and asked me for L. & N. cars of some description, size or capacity for loading, and asked me if I had such a car on the switch; and if I had such a car and he would want to load it, I would find the destination, the point to which it was going to be sent, and I would call on our
998 agent for advice in the matter, and if it was all right to let him load the car, I would tell him so; and if not, I would tell him so.

141. You mean, if your agent told you it was all right—in other words, gave his consent, then you would notify Mr. Ashcraft?

A. Yes, sir.

142. Did that delay contemplate greater length of time than it would simply take to load a car at Central Yards?

A. That was all—simply to load the car and return it to the Louisville & Nashville. That was all the instructions I ever gave any one about holding cars.

143. Was that prior to the time you testified before the Interstate Commerce Commission?

A. Yes, sir. I don't think he has ever asked me for a car since that time.

144. Did you ever at that time instruct him or authorize him in any way to hold a car for as much as a day for such purposes?

A. No, sir.

999 MARCH 17, 1903.

Met by agreement of counsel.

M. H. SMITH, recalled on behalf of the defendant, being duly sworn and examined by Mr. Bruce, testified as follows:

1. Mr. Smith, after your deposition was taken a few days ago it was written out by the reporter from his stenographic notes, and question No. 34 submitted to you was as follows: "You do not mean to say all the flour manufactured by Ballard & Ballard is sold at point- on the lines of the Louisville & Nashville Railroad"—to which question the stenographer reports you as having answered in the manner in which I now show you on the face of the deposition. I will be glad if you will look at that and see if it is a correct report of what you said, and if not, then state what you did say in answer to that question; or if you can't recall exactly what you said, then state now what would be a correct answer to that question.

A. The correct answer would be, "All sold and shipped to points on and reached via the Louisville & Nashville Railroad, except to some non-competitive points, and what it sells in the City of Louisville."

1000 2. I refer you also to question 36 in that examination, which is reported as follows: "Entirely selfish and without disregard to the public interests"; and also show you your answer to that question as reported by the stenographer who took your deposition, and ask you to read the answer as thus reported and state whether or not you are correctly reported, and if you remember what your answer was, state it; if you cannot recall what you said, then state what would be a correct answer to that question; and if you have any statement to make as to the form of question reported by the official Stenographer, you can make that statement also.

A. The question has evidently been erroneously reported by the stenographer. The question was: "Entirely selfish and disregards the public altogether"? The answer was: "It does not disregard the public, because the rates we make for Ballard & Ballard are the same as those made by competing lines, and Ballard & Ballard, in being

required to ship their property to competitive points via the Louisville & Nashville Railroad, instead of via the Southern Railway, are not injured. We are very careful to make the rates via the
1001 Lousville & Nashville Railroad as low as are made by any competing line, and the public, we take good care of it. It is for the interest of the Louisville & Nashville Railroad Company to build up and promote traffic, and to not do anything to injure the public, or to hurt business. It can only exist by creating and increasing its traffic."

3. Question 83 in your deposition is as follows: "Is it not a fact that people are forced to take it over your line"? And I call attention to your answer to that question as you are reported by the official stenographer, and ask you to say whether or not you are correctly reported there. and ask you to state what your answer to that question was, if you know, and if you do not know just what the language was, then state what a true answer would be.

A. The questions are not correctly reported by the official stenographer. The question was: "Is that not because the people are forced to——" My answer was and is: "Yes; certainly; that is what we created those facilities for. We do just as other corporations do under like circumstances at other points. The Southern
1002 Railway and the Illinois Central treat us the same way at other points: Memphis, New Orleans, etc. Each tries to promote the interests it represents in a legitimate way. We are legitimately entitled to the transportation of live stock from the Bourbon Stock Yards going to Cincinnati and beyond. We are the short route, have the best facilities, and can make better time. We can have the stock pretty well on the way to Cincinnati by the time it could be switched from East Louisville to the point of connection in the City of Louisville, and then when it gets to point of connection in the City of Louisville they have a much longer haul than we have."

4. Question 137 in your dposition was as follows: "Is not there a rule with the superintendents of the various roads entering the City of Louisville, that they will allow their cars to go onto the tracks of a connecting carrier where it is only for delivery purposes and within the switching limits of the points of interchange?" And I now show you your answer to that question as reported in your deposition by the official stenographer, and ask you to say whether or not you are there correctly reported, and if not, then what you did say, and what would be a correct answer to that question.
1003 Just state the facts as they are.

A. I have not been accurately reported by the Court reporter. My answer was and the correct answer is: "There may be such an agreement, but, as I say, it is a matter of agreement. If any other railroads are not parties to the agreement or refuse to become parties——" "Question: Then they will not let their cars go"? "Answer: We refuse to let our cars loaded with coal go onto connecting roads. Take the illustration of the Central Coal and Iron Company. They have a mine on the Illinois Central Railroad. They had entered into contracts to sell coal to certain parties in the

City of Louisville. For some reason they were unable to get transportation from the Illinois Central to fill their contracts. They go to mines on the Louisville & Nashville Railroad and buy coal—The Central Coal & Iron Company, a coal mining company—ship to Louisville and undertake to have it delivered on the tracks of other roads. We say No, we won't furnish cars, because we need those cars to transport coal to patrons located on our road who are dependent upon the mines operating and mining coal on the Louisville & Nashville Railroad for their supply. Now, it would be unjust to
1004 such consumers on the Louisville & Nashville Railroad to divert that coal from their regular patrons to patrons of the Central Coal & Iron Company operating coal mines on the Illinois Central Railroad. We would be very glad to help out our neighbors in those cases after we have taken care of our own obligations."

5. In answering my questions this morning, and in saying what your answers were on the former occasion, and also in some respects saying what the questions were on the former occasion, how have you been able to state thus positively what the questions and answers on the former occasion were?

A. When the original deposition was taken by the Court reporter, by my instructions, Mr. M. J. Reedy, stenographer, also made shorthand notes of the questions and answers, and has written out his notes in typewriter, and so far as I can judge, they are in these cases a more correct report of what I did say than the report made by the official reporter.

6. Well, are the answers which you have now given to the questions concerning which you have been specially interrogated this morning, correct answers to those questions?

1005 A. They are, and I think more clearly expressed.

Cross-examined by Mr. J. C. DODD:

7. Mr. Smith, in correcting the answers to the four questions to which your attention has been called, you have read, have you not, from the stenographic report or transcript of the evidence as made by your own private stenographer as conveying your meaning intended to be given on the occasion referred to, and not relied upon your memory as to what you said, have you not?

A. That is true.

8. Mr. Smith, you could not possibly undertake to say which form of question, from memory, was propounded to you, or the language in which you answered any question?

A. Not now, but the transcript made by Mr. Reedy was done immediately or as soon as possible after my deposition was taken, and when the matter was fresh in my mind, and seems to me to be a correct transcript of what I did say.

9. You don't know how long after the stenographic notes were taken by the official reporter it was before he wrote out in typewriter questions and answers propounded to you, do you?

1006 A. Mr. Reedy wrote most of it, I think, on that and the following day.

By Mr. DODD: You didn't understand my question.

Question 9 read to the witness.
A. Oh no, I don't know.

Redirect examination by Mr. BRUCE:

10. State whether or not it is true that not only Mr. Reedy wrote out his report of your testimony immediately after it was taken, but whether you thereupon immediately read it over?
A. I read it as fast as he wrote it. Every time he wrote three or four pages, I read it.

1007 LOUISVILLE, KY., *March 31st*, 1903.

Met pursuant to agreement at the offices of Messrs. Helm Bruce & Helm, in the Louisville Trust Building, counsel on both sides being present, and the taking of these depositions was continued as follows:

THOMAS DIGNAN, called for the defendant, being duly sworn, testifies as follows:

1. Please state your name, age, residence, and occupation.
A. Thomas P. Dignan; age 40 years; residence, 1125, 7th Street, Louisville, Ky.; occupation, car clerk L. & N. local office.
2. You are the car clerk in the office of Mr. Dempf?
A. Yes, sir.
3. Of the Louisville & Nashville Railroad Co.?
A. Yes, sir.
4. Please state whether or not you have ever directed Mr. Ashcraft, agent of the Southern Railway at the Central Stock Yards, to hold L. & N. cars at the Central Stock Yards for loading
1008 back to the L. & N., where those cars had come to the Central Stock Yards?
A. I don't remember telling Mr. Ashcraft to hold any L. & N. cars to load back to the L. & N.

Counsel for plaintiff declines to cross examine.

1009 & 1010 STATE OF KENTUCKY, *County of Jefferson, ss:*

I, Alonza Walker, Official Stenographer of the Jefferson Circuit Court, Chancery Branch, First Division, certify that the foregoing depositions of Milton H. Smith, C. O. Bradford, William J. Dickinson, Mark E. Gabhart, and Thomas P. Dignan, were taken pursuant to agreement and pursuant to an order of reference heretofore duly entered herein, before me, at the time and place, and in the action mentioned in the caption; that said witnesses were first duly sworn by me that the evidence they should give in the said action should be the truth, the whole truth and nothing but the truth; that said depositions were first taken in shorthand by me, and a full true and accurate transcript of same afterwards made by me; that the reading of the depositions to the witnesses and their signatures to the same were waived by counsel; that Messrs. J. C. Dodd and

W. M. Smith appeared for the plaintiff, and Mr. Helm Bruce appears for the defendants.

Witness my hand this 31st day of March, 1903.

ALONZO WALKER,
Official Stenographer.

Attest:
SHACKELFORD MILLER, *Judge.*

Fee for taking said depositions $54.00.

1011 EXHIBIT M. H. S. No. 1.

Copy Deed.

The Louisville Railway Transfer Company
to
The Louisville & Nashville Railroad Company.

Deed Book 426, Page 312.

This Indenture made and entered into this — day of November, A. D. 1893, by and between the Louisville Railway Transfer Company, first party, and the Louisville & Nashville Railroad Company, second party, Witnesseth:

That, whereas, by the amendment of February 2nd, 1866, to the charter of the Louisville & Frankfort and Lexington & Frankfort Railroad Companies, and by the Contract of 3rd day of June A. D. 1870 by and between the City of Louisville in the State of Kentucky, of the first part; The Louisville, Cincinnati & Lexington Railroad Company of the second part; and The Louisville & Nashville Railroad Company of the third part, the said Louisville, Cincinnati & Lexington Railroad Company was authorized to extend its road through the City of Louisville, and operate the same by steam locomotive power, from a point on the track of the Louisville &
1012 Nashville Railroad south of the House of Refuge grounds, running thence in a North-easterly direction, but so as to avoid the house of Refuge grounds, to or near Swan Street, thence along or near to the line of said Swan Street to the valley of Beargrass Creek; thence down the same to the said Company's grounds near the head of Jefferson Street, for the purpose of connecting said Louisville, Cincinnati & Lexington Railroad with The Louisville & Nashville Railroad, and

Whereas, by an Act to Incorporate the Louisville Railway Transfer Company, and conferring certain powers in relation thereto on the Louisville, Cincinnati & Lexington, and The Louisville & Nashville Railroad Companies, approved March 10th, 1871, The Louisville Railway Transfer Company was incorporated by the name and style of The Louisville Railway Transfer Company, and by such name endowed with perpetual succession, with all the rights and

privileges of a body politic and corporate, including the right to purchase, hold, sell and convey real estate; and

Whereas, said The Louisville Railway Transfer Company, by said act of incorporation was empowered to contract with the
1013 Louisville, Cincinnati & Lexington and The Louisville & Nashville Railroad Companies, and other parties interested, for the right-of-way, road bed and other properties pertaining to the same and to build or complete building, equip and operate a railroad through the City of Louisville, with a single or double track on and along the route granted to said Railroad Companies by the City of Louisville, connecting said Louisville, Cincinnati & Lexington Railroad with said The Louisville & Nashville Railroad, and the said Louisville, Cincinnati & Lexington and The Louisville & Nashville Railroad Companies were thereby authorized and empowered to sell, convey and transfer to the said The Louisville Railway Transfer Company, their respective rights and interest in said connecting line of Railroad, then partially constructed, and

Whereas, said Louisville, Cincinnati & Lexington Railroad Company and said The Louisville & Nashville Railroad Company did sell, convey and transfer to said The Louisville Railway
1014 Transfer Company, their respective rights and interests in said connecting line of railroad, then partially constructed; and

Whereas, The Louisville & Nashville Railroad Company has by purchase become the owner of said Louisville, Cincinnati & Lexington Railroad, and has also by purchase become the owner of all of the capital stock of said The Louisville Railway Transfer Company; and

Whereas, said Louisville, Cincinnati & Lexington Railroad and said connecting line of railway, and a branch thereof, connecting with a branch of The Louisville & Nashville Railroad in A Street, in the City of Louisville, have become in fact a part of The Louisville & Nashville Railroad,

Now, therefore, in consideration of the premises, and of one dollar in hand paid by the second party to the first party the said The Louisville Railway Transfer Company, first party, has bargained and sold, and by these presents does bargain, sell and convey unto The Louisville & Nashville Railroad Company, second party, all of the said connecting line of railway situate in the County of Jeffer-
1015 son and State of Kentucky, extending from said point on the track of The Louisville & Nashville Railroad South of the House of Refuge grounds, the junction of said Railway Transfer track with the track of The Louisville & Nashville Railroad at South Louisville, running thence in a Northeasterly direction, as now constructed and operated, avoiding the House of Refuge grounds, to Dandridge Avenue, thence between Swan and Logan Streets to the valley of Beargrass Creek; thence down the same to the second party's grounds near the head of Jefferson Street, (and also said branch connecting the main line of said The Louisville Railway Transfer Company with the branch of said The Louisville & Nashville

Railroad in said A Street) and also all of the other property, rights, privileges, immunities and franchises of the said The Louisville Railway Transfer Company, except along the right to be a corporation.

To Have and To Hold the same to The Louisville & Nashville Railroad Company, its successors and assigns forever.

In Witness Whereof, the said The Louisville Railway
1016 Transfer Company hereunto subscribes its name and affixes its corporate seal this date first above written.

THE LOUISVILLE RAILWAY TRANSFER COMPANY,

[SEAL.] By M. H. SMITH, *President.*

Attest:
J. H. ELLIS, *Secretary.*

STATE OF KENTUCKY, *County of Jefferson, ss:*

I, Thos. B. Harrison, Jr., a Notary Public in and for the State and County aforesaid, do hereby certify that M. H. Smith and J. H. Ellis whose names are signed to the foregoing conveyance respectively as President and Secretary of the Louisville Railway Transfer Company, and who are known to me to be such President and Secretary, acknowledged before me on this day that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date as and for the act and deed of said Louisville Railway Transfer Company, and that the seal thereto affixed is the genuine corporate seal of said Louisville Railway Transfer Company. My commission expires July 10th, 1896.

1017 Given under my hand and seal this December, 7th, 1893.

[SEAL.] THOS. B. HARRISON, JR.,
Notary Public, Jefferson County, Ky.

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day at 11:35 O'Clock, A. M., the foregoing deed was produced to me in my office, and that I have recorded it, this and the foregoing certificate in my said office.

Witness my hand this 2 day of Jan'y 1894.

GEO. H. WEBB, *Clerk.*

A Copy,
Attest:
W. J. SEMONIN, *Clerk,*
By LENORE DURBECK, *D. C.*

1018 B. A. June 2, 1870.

Approved
LUCAS.

B. C. C. June 2, 1870.

Approved
VAUGHAN.

& spread on records of the C. C.

Recorded in Journal No. 12.

Common Council.

Page 858.

This Contract made and entered into this 3rd day of June A. D. 1870, by and between the City of Louisville in the State of Kentucky of the first part;

The Louisville, Cincinnati & Lexington Railroad Company of the second part, and the Louisville & Nashville Railroad Company of the third part, Witnesseth:

1019 That whereas the General Assembly of the Commonwealth of Kentucky enacted and provided that the party of the second part may procure the right of way, and extend their road through the City of Louisville—the Mayor and Council consenting thereto, or around the City of Louisville—to make connection with the Louisville & Nashville Railroad. Now therefore in consideration of the premises and of the mutual benefits expected to be derived by the parties, and of the covenants and stipulations herein contained, the said City of Louisville her Mayor and Council, do hereby consent and agree, that the party of the second part may extend their road through said city and operate the same by steam locomotive power, upon the routes, terms and conditions herein set forth.

(The route of said extension shall be and begin at and from a point on the track of the Louisville & Nashville Railroad, south of the House of Refuge grounds, running thence in a northeasterly direction, but so as to avoid the House of Refuge grounds, to or

1020 near Swan Street, thence along or near the line of said Swan Street to the valley of Beargrass Creek, thence down the same to the said company's grounds, near the head of Jefferson street, at which point a depot shall be erected, where all through freight and passengers shall be transferred.) Along this route where the same crosses or runs upon streets, alleys, or any of the public ways or property belonging to said City, full right of way is hereby granted to the said party of the second part, without cost or claim for damages on the part of said City, but when the same crosses private property, said company shall pay for and obtain the same as provided in its charter and at its own costs. And the party of the second part binds itself to hold said City harmless from all damages to person or property resulting from the construction and operation of said extension of its railroad in the city, and said City reserves the right and power to make all streets, public ways or alleys, and all sewers, culverts and other needed improvements, across, over or under or *over* said extended road, that the General Council of said City may from time to time direct, the

1021 same to be done under the supervision of the City Engineer, without let or hindrance from the party of the second part.

But said streets, alleys, ways, sewers, culverts or other needed improvements shall be constructed in such manner and at such

times as shall not necessarily or for an unreasonable time obstruct or hinder the operation or use of said extension of said Railroad, and in no event shall the party of the first part be held responsible for the cost of removing or replacing the rails, cross-ties or for the necessary detention of the cars or trains.

And said extension shall be laid upon such grades as the City Engineer shall deem best for the interest of the City of Louisville, and in such manner as not unnecessarily to obstruct or interfere with any of the streets, alleys or public ways of said City, or the making of any needful improvements thereon.

And it is expressly agreed that the said route for the line of connection shall be located under or over, or along any street alley or public way, along or near thereto, before described, as the judgment of the said City Engineer may seem best to the interests of the party of the first part, and the whole of said connecting
1022 line of Railroad to be made and built under the supervision of the said City Engineer.

And the party of the second part agrees to keep the streets over which it may lay its tracts in good repair, inside of the same, and for two feet on each side thereof on all the route provided for in this contract, and (permit individuals to connect with said railway, and with the railway or the route hereinafter provided for, between the head of Jefferson street and the depot north of Main street by switches or tracts for the purpose of receiving and delivering freights thereon, by the loaded car load from one shipper or consignor to one consignee—such switches are to be constructed and maintained at the cost of the parties desiring their use, under the supervision of the City Engineer, but not to be permitted unless the right to construct the same shall first be obtained from the General Council).

When the said connecting track is completed the party of the second part shall cease to use steam power on Jefferson Street, excepting with dummy engines or enclosed light locomotives,
1023 in the transportation of their cars to and from the depot on Jefferson Street between Brook and Floyd Streets.

The parties of the second and third parts respectively bind themselves, that neither freight, passenger cars nor engines belonging to or controlled by either shall pass over or on the railway of the other beyond said *constructing* track under a penalty of a forfeiture of the right of way herein granted. The said connecting track from below the House of Refuge to the head of Jefferson Street shall not be built or used nearer the railroad of the party of the second part than a distance of ten (10) feet, until the party of the second part shall have changed the *guage* of its railroad to a *guage* of four feet eight and a half (4 ft. 8½) inches, the said change of *guage* to be made on or before the first day of December 1870—Provided the party of the first part shall pay three fifths (3/5) of the costs of said change of *guage* including cost of the change of *guage* of the rolling stock of said party of the second part, and the said party of the third part the other two fifths (2/5) thereof, which the said first

and third parties bind themselves respectively to do, the cost
1024 of the said change of *guage* and rolling stock to be determined by three disinterested persons, one to be selected by each of the parties, and said change of *guage* is not to be required until the parties of the first and third parts, or either one of them, have provided the funds to pay the cost thereof, and give due notice of the same.

The party of the first part reserves the right and power to revoke the consent herein granted for the construction and operation of said extension and right of way, after the expiration of thirty years (30) from the full execution hereof, having first given the party of the second part twelve months' notice of such intended revocation. And in consideration of the consent herein granted for the construction of said extension or connecting railway, said party of the second part agrees to pay said party of the first part the sum of Five Thousand ($5,000) dollars per month, beginning of the first day of January 1871, and continuing at that rate for the term of thirty years. Provided, however, that should said parties of the first and third parts provide the means to pay for the cost of the said change
1025 of *guage* and rolling stock as aforesaid, and the party of the second should change the *guage* of their said railroad as aforesaid — or before the first day of December 1870, the payment of the said Five Thousand Dollars per month shall not be obligatory on the part of the party of the second part, unless it shall refuse to remove its track from Jefferson street to the north of Main street to the road bed and depot grounds there to be furnished by the party of the first part, as hereinafter provided.

And it shall not be obligatory upon the party of the second part to make said payments of Five Thousand Dollars per month, unless the parties of the first and third parts, or either of them, shall provide the means to pay the cost thereof, and it then refuses to make the change of *guage*, or unless it shall refuse to remove its track from Jefferson street to said road bed and depot grounds north of Main Street as before mentioned.

The party of the second part shall receive from and deliver to the owners, Louisville freight destined for, or coming from points on the Louisville & Nashville Railroad, by the loaded car load
1026 from one consignor to one consignee, in the depot at the head of Jefferson Street, and at the various side tracks that may be established along the line of the connecting track; the party of the third part agreed to receive from and deliver to the party of the second part such freight at the junction for the connecting track below the House of Refuge, and in consideration of the said freight being loaded in, or unloaded from the cars at the expense of the shipper, the party of the third part agrees to charge one dollar less per car load from their Broadway depot for all such freight as should have been loaded or unloaded at the expense of the party of the third part, and the party of the second part binds itself not to charge more than one dollar per car load for carrying said freight between the junction of the two roads near the House of Refuge, and

their depot at the head of Jefferson street, or from or to any of the side tracts on said connecting road.

For freight destined to or coming from points on the Louisville & Nashville Railroad, and which according to the tariff
1027 of the Louisville & Nashville Railroad is to be loaded or unloaded at the expense of the shipper, the party of the second part if required to receive or deliver the same at their depot at the head of Jefferson street or at any of the side tracts along the proposed connecting line, shall not charge more than one dollar per car load, which charge shall include the carrying of the empty cars to and from the points of the shipments.

The party of the third part agrees to let their cars go on the connecting tracts for the purpose of delivering and receiving freight, but the party of the second part shall be responsible to the party of the third part for the prompt return of said cars, in as good order as delivered to them, and the party of the second part shall have the right to enforce on the shippers the established rules and fines in order to guard against the unnecessary detention of cars.

The said City shall on or before the first day of January 1875, at its own cost construct and prepare a suitable and substan-
1028 tial road bed above high water mark, sufficient for a double track first class railway, commencing on the railroad of the party of the second part, at or near its round house, thence along or near the route surveyed by I. C. Broadhead east of the west side of Buchanan Street, and north of Franklin street to a point between Brook and Second Streets, at which last named point to be hereafter agreed upon, the said city shall furnish and exchange ground for depot purposes, of sufficient dimensions to answer the purposes of the party of the second part and for the delivery and receipt of freight as contemplated in this contract, the same to be above high water mark, the said grounds to be exchanged with the party of the second part for their grounds and improvements between Jefferson and Green, and Brook and Floyd Street, at valuation for railroad purposes, and the party of the first part shall convey to the party of the second part the road bed and depot grounds aforesaid north of Main street in fee simple with covenant of general warranty, and the party of the second part shall upon the
1029 completion of the road bed and convevance of the same, and the depot grounds as aforesaid, and upon valuation as aforesaid, convey in fee simple with covenant of general warranty the title to the aforesaid ground and improvements between Jefferson and Green, and Brook and Floyd Streets in said city, and remove its track and forever relinquish all its rights and franchises it now owns or claims on Jefferson Street west on the present grounds of the party of the second part at the head of Jefferson Street, the said removal of said track, and relaying the same on said road bed north of Main Street to be at the cost of the party of the second part.

The parties of the second and third parts hereby agree to lay an additional rail from the head of Jefferson Street along the route first set forth herein to the line of the Louisville & Nashville Rail-

road, thence along the same to and into the present depot of the Louisville & Nashville Railroad Company on Broadway in such manner as to allow the cars built on the *guage* of four feet eight
1030 and a half inches (4 ft. 8½ —) to run over the connecting track from the head of Jefferson Street to the Louisville & Nashville Railroad near the house of Refuge and from thence into the Louisville and Nashville Depot on Broadway, for the delivery and reception of freight in said depot, the same to be delivered and received by the loaded car only, and when to be sent from one consignor to one consignee, and to be loaded and unloaded at the cost of the shippers or consignees—and for all such freight which is delivered and received at said Broadway depot coming from or going to points on the road of the second party, and which freight should have been loaded or unloaded at the expense of the second party, said second party agrees to change in consideration of said loading and unloading being performed by the shipper or owner of the goods, one dollar per car load less for such freight, then if the same had been received in or delivered to their depot on Jefferson Street, and the party of the third part shall not charge more than one dollar per car load for hauling the said freight between their depot on Broadway and the junction of the two roads near the House of Refuge.

1031 For all Louisville freight coming from or going to the Louisville Cincinnati & Lexington Railroad or connecting track, delivered at the depot on Broadway, and which according to the tariff of the party of the second part, should be loaded or unloaded at the cost of the shippers or owners of the goods, the party of the third part agrees to charge not exceeding one dollar for each car load for hauling the same between their depot on Broadway and the junction of the two roads, and make no charge for the hauling of empty cars. It also agrees to enforce the prompt delivery of cars as provided for in the case of the cars of the third party going on the road of the second party.

The parties of the second and third parts agree between each other to transact the business arising under this contract (and it is understood that reference is had to Louisville business alone and not through business) in accordance with the practice and rules regulating the transaction of business of connecting roads, each of said parties being responsible to the shipper or owner of
1032 the freight, only while it is in its possession, it being understood that the connecting road from the house of Refuge to the head of Jefferson Street is a part of the road of the second party, and is to be operated and kept in repair at the expense of said party, the same as any other part of their road, and the track from near the House of Refuge to the Broadway Depot is to be operated and kept in repair by the party of the third part, the same as any other part of the road of said third party. After the change of *guage* as herein provided shall have been made, the said Railroad Company may exchange through freight and passengers at the depot of the Louisville & Nashville Railroad Company, as well as at the depot at the head of Jefferson Street.

And after said City shall have furnished said road bed and depot grounds North of Main Street as aforesaid, then the party of the second part shall construct an additional track upon said road bed from the depot at the head of Jefferson Street into the depot North of Main Street herein provided for, and of such guage as to allow the cars of the party of the third part to be run on the same
1033 for the delivery and reception of freight by the loaded carload to and from one consignor to one consignee in said depot, or at any private side track along said additional track, and said additional track shall be operated by the party of the second part under the same conditions and regulations provided for the operation of the track between the House of Refuge and the head of Jefferson Street, with the exception that said party of the second part shall have the right to charge for every carload of freight carried between the said depot North of Main street, or any of the private side tracks between the head of Jefferson Street and the depot North of Main street and the junction of the two roads at the House of Refuge a sum not exceeding Two Dollars ($2.00), per carload, and the party of the third part agrees to charge one dollar less per carload than established rates from their Broadway depot, this de-cution being made by the party of the third part on all such freight as would have been loaded at the expense of the party of the third part, had said freight been received at their Broadway depot.

The party of the first part expressly grants the right of
1034 way herein mentioned, that North of Main street, and that up Beargrass and South of the House of Refuge, with the reservation of the right to grant to other railroad companies similar rights of way along the same general routes, but not along the same road bed or in such manner as to interfere with the free use of the same by said parties of the second and third parts or any necessary switches that may be attached thereto.

The rate of speed used by said companies on the line of road from the head of Jefferson Street to the depot North of Main Street, shall not exceed (5) miles per hour from six (6) A. M., to eight (8) P. M., and shall not exceed ten (10) miles per hour between eight (8) P. M. and six (6) A. M., and the rate of speed on the connection line within the city limits between the head of Jefferson Street and the point of connection South of the House of Refuge grounds where said road crosses or occupies a public highway shall not exceed six (6) miles per hour between the hours of six (6) A. M. and eight (8) P. M. and ten (10) miles per hour between eight (8)
1035 P. M. and six (6) A. M. It is agreed by and between the parties of the second and third part, that the party of the third part shall pay one half of the costs of the construction of the said connecting lines from the head of Jefferson Street to the point below the House of Refuge, the right of way, and other expenses, in building the same, and also one half of the cost of laying a third rail from the House of Refuge to the depot of the third party on Broadway, and also one half of the cost of a third rail from the depot of the second party at the head of Jefferson Street to the contemplated depot north of Main Street, and that the other half of these expenditures shall be bourne by the party of the second part,

It is understood that one half of the connecting track from the House of Refuge to the head of Jefferson Street shall belong to the party of the second part, and one half to the party of the third part, and that the party of the third part shall have a lien on the same for the amount of money paid by it for its construction, and that said connecting track shall not be sold or leased to any other party
1036 unless the money expended on the same by the party of the third part shall have been first refunded to the party of the third part, or such other arrangement shall have been made as may be satisfactory to the party of the third part, but it is expressly understood that while said road is operated by the party of the second part and for their benefi' that the party of the third part allow to the party of the second part the use of the road free of charge.

And the said party of the second part, upon the approval of this contract by the General Council and fully executed by the Mayor and other parties hereto, agrees and binds itself to relinquish all right to make a connection with the Louisville & Nashville Railroad outside of the City in any other way or manner than that herein indicated. unless prevented from using the said extension line and the rights and franchises herein granted by causes beyond their control, or unless said rights or franchises should at any time hereafter cease, as herein provided.

For the faithful compliance of all the requirements of this
1037 contract the said parties of the second and third parts shall execute bond to the City of Louisville in the sum of One Hundred Thousand Dollars, and the same to be approved by the General Council.

This contract shall begin and take effect when approved by the General Council and signed by the Mayor, and the parties of the second and third parts.

CITY OF LOUISVILLE,
By JOHN G. BAXTER, *Mayor.*

Attest:

(U. S. Internal —.)

JAS. C. MORRIS,
Mayor's C'lk.

1038 J. F. SPEED,
Vice-Pres. Lou., Cin. & Lex. R. R.

Signed by order of the Board.

Attest:

G. W. BRYAN, SR., *Sec'y;*
W. RANNEY, *Sec.;*
H. D. NEWCOMB, *Pres't,*
For Louisville & Nashville Railroad.

[SEAL.]

(Stamp 5c.) (Stamp 5c.) (Stamp 5c.) (Stamp 5c.) (Stamp 5c.) (Stamp 5c.) (Stamp 5c.)

[SEAL.]

A copy attest:

[SEAL.] ALF W. DAVIS, *C. B. H.*

This is a true and correct copy of the original on file in my Office.
JOHN H. HANCOCK,
Exhibit M. S. H. No. 2. *City Comptroller.*

1039 This deed of Conveyance made and entered into this Fourteenth day of December 1891, between The Louisville and Nashville Railroad Company party of the first part and John Cudahy party of the second part.

Witnesseth: That the said party of the first part for and in consideration of the sum of Fourteen Thousand three Hundred Fifty seven and 23/100 Dollars, the receipt of which is hereby acknowledged, and in further consideration, that the party of the second part agrees as he hereby does to dedicate for street purposes the east half of Floyd Street if extended, being a strip of ground thirty (30) feet wide on the East side of the center line of said Floyd Street if extended, from the west right of way line of the Louisville Southern Railroad to the southern boundary of the land conveyed by this deed, and also that the party of the first part shall have the privilege of crossing with its railroad tracts said strip so to be dedicated for street purposes at any point or points between the right of way of the Louisville Southern Railroad and the said Southern
1040 boundary of the land herein conveyed do hereby sell and convey to the party of the second part, his heirs and assigns, the following described property to wit: 1st. A lot of land, beginning at a point the intersection of the center line of Floyd street, if extended, with the South right of way line of the Louisville Southern Railroad, which point is 337.67 feet easterly measured along said right of way line from the intersection of said line with the east line of right of way of the Louisville Railway Transfer of the L. & N. R. R. Co. thence with the right of way line of the Louisville Southern Railroad S. 620 13′ E. 857.83 feet to a point; thence S. 9° 38′ E. 20 feet to a point thence N. 70° 23′ W. 823.67 feet to a point in the center line of Floyd Street, if extended, thence with said center line N. 5° 50′ E. 142.45 feet to the point of beginning containing 1.479 acres; if being a portion of the land conveyed to the L. & N. R. R. Co. by S. S. Meddis and wife by deed dated Oct. 15th 1890, also 2 A lot of land beginning at a point the intersection of the center line
1041 of Floyd Street, if extended with the line of the L. & N. R. R. Co.'s property, the said point being 41.6 feet N. 19° 15 W. from a stone, the sixth corner in the survey of the tract of land conveyed by Stephen E. Jones to said R. R. Co. by deed dated 3d day of April 1882, and in the line of same, thence S. 19° 15′ E. 41.6 feet to a stone; thence S. 19° S. 6′ E. 1699 feet to a large oak tree a corner to L. & N. R. R. Co.'s land; thence N. 84° 10′ W. 733.93 feet to a stake in the center line of Floyd Street, if extended, thence N. 5° 50′ E. with said center line 1578.35 feet to the point of beginning containing 13.296 acres, it being a portion of that land conveyed by Stephen E. Jones and others to said Railroad Company by deed dated the 3d day of June 1890. The two lots hereby conveyed are more particularly shown by a plat hereto attached and made part of this deed.

Exhibit M. S. H. No. 3.

(Here follows diagram marked p. 1041*a*.)

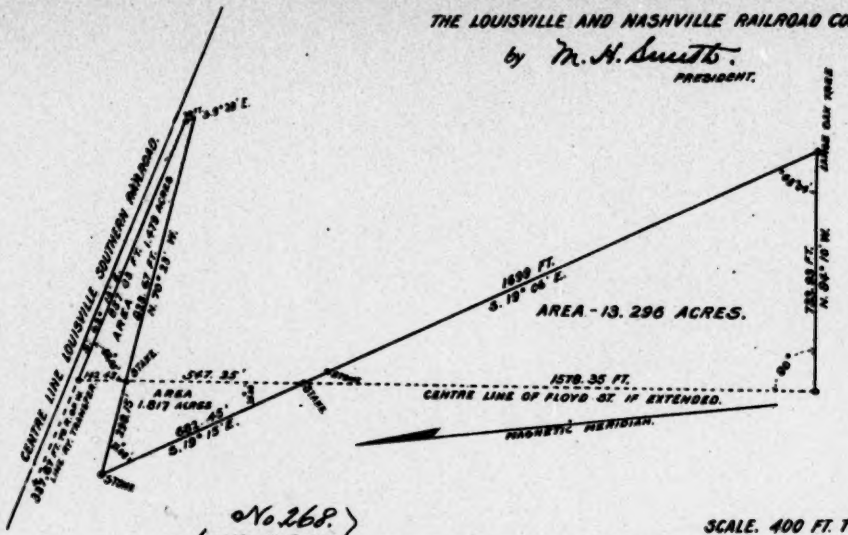
*

Identified as the plat made a part of the deed from the Louisville and Nashville Railroad Company to John Cudahy dated this 14th day of December A.D. 1891.

THE LOUISVILLE AND NASHVILLE RAILROAD CO.

by M. H. Smith.

PRESIDENT.



SCALE. 400 FT. TO 1 INCH.

No 268.
L & N. R.R.Co.
to
Central Stock Yards Co

p. 1041

To have and to hold the same, together with all the appurtenances thereunto belonging, unto the party of the second part his heirs and assigns forever.

And the said party of the first part hereby covenants with
1042 the said party of the second part that it will warrant the title to the property hereby conveyed unto said party of the second part and his heirs and assigns forever.

In Testimony Whereof the parties of the first and second parts have hereunto subscribed their names the day and year aforesaid.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.] By M. H. SMITH, *President.*

Attest: J. H. ELLIS, *Secretary.*

Whereas the Louisville & Nashville R. R. Co. did execute and deliver to the Central Trust Company of New York, as Trustee a certain mortgage conveying the foregoing described premises and other property, bearing date the 2nd day of June 1890 and duly recorded, and whereas, The said Trustee is satisfied, in the exercise of a fair discretion that the said described premises should be sold and disposed of Now Therefore The said Trustee has become a party
1043 hereto for the sole purpose of releasing said Premises from the lien of said mortgage, and in consideration of the sum of Fourteen thousand three hundred and forty seven 25/100 Dollars the purchase money mentioned, paid over to said Trustee by the said Railroad Company at or before the ensealing and delivery hereof, said Trustee does hereby release and confirm the said Premises to said John Cudahy heirs and assigns free and clear of the lien and encumbrance of said mortgage and of the trust therein or thereby declared or created.

In Testimony whereof the Central Trust Company of New York has caused its corporate name and seal to be signed and affixed to this instrument this 21st day of April A. D. 1892.

CENTRAL TRUST COMPANY OF NEW YORK,

[SEAL.] By E. FRANCES HYDE,
2 *Vice President.*

Attest: C. H. P. DABNEY, *Secretary.*

CITY AND COUNTY OF NEW YORK, *ss:*

On this 21st day of April 1892, before me personally came
1044 E. Frances Hyde the 2 Vice President of the Central Trust Company of New York, to me personally known who being by me duly sworn did depose and say that he resided in the City of New York that he was 2 Vice President of the Central Trust Company of New York the corporation described in and which executed the foregoing instrument by him as such officer thereof, that he knew the corporate seal of said Corporation and that the seal affixed to said

instrument was such corporate seal; that it was so affixed by authority of the Board of Trustees of said corporation, and *the* he subscribed his name thereto as Second Vice President thereof, by the like authority and the said E. Francis Hyde further acknowledged to me that he executed the foregoing instrument for and in behalf of, and as the act and deed of said Central Trust Company of New York.

FRANK B. SMIDT,
Notary Public, N. Y. Co.

[SEAL.]

1045 I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day the foregoing Deed was produced to me in my office and acknowledged and delivered by M. H. Smith as President *President* to be the act and deed of the Louisville & Nashville Railroad Company a party thereto.

Witness my hand this 15th day of Decr. 1891.

GEO. H. WEBB, *Clerk*,
By JOS. J. SCHENE, *Dep. C'l'k.*

I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day *the* foregoing deed was again produced to me in my office and again acknowledged and delivered by M. H. Smith as President to be the act and deed of the Louisville and Nashville Railroad Company, a party thereto.

Witness my hand this 21st day of Decr. 1891.

GEO. H. WEBB, *Clerk*,
By JOS. J. SCHENE, *Dep. C'l'k.*

1046 I, Geo. H. Webb, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day at 12 o'clock M. the foregoing deed together with the plat thereto attached was again produced to me in my office and that I have recorded said deed together with the plat hereto attached, this and the foregoing certificate in my said office.

Witness my hand this 25th day of April, 1892.

GEO. H. WEBB, *Clerk.*

A Copy.
Attest:

W. J. SEMONIN, *Clerk*,
By NELLIE O. YEAGER, *D. C.*

1047 EXHIBIT WM. J. DICKINSON No. 1.

Code of Per Diem Rules Governing Settlement for the Use of Freight Cars.

The American Railway Association.

Adopted April 24, 1902.

1048 *Definitions.*

Home Car.—A car on the road to which it belongs.
Foreign Car.—A car on a road to which it does not belong.
Private Car.—A car having other than railroad ownership.
Home.—A location where a car is in the hands of its owner.
Home Road.—The road which owns a car, or upon which the home of a private car is located.
Home Route.—The line of intermediate roads over which a foreign car was moved from home.
Home Junction.—A junction with the home road.
Home Route Junction.—A junction on the home route.
Switching Service.—The movement of a car at a charge for the service rendered, the road performing such service not participating in the freight rate.

1049 *Per Diem Rules Governing Settlement for the Use of Freight Cars.*

1. The rate for the use of freight cars shall be 20 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate.

2. Days shall be reckoned by subtracting the date of receipt from the date of delivery.

A road which receives and delivers a car on the same day shall not pay the per diem for that day.

3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such notice, making thirty days in all, thereafter a penalty rate of 80 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.

1050 4. All railroads, including ferry lines, shall be responsible to the car owner for amounts accruing for the use of a car at the established rates, whether such car is in road service or switching service, until the car has been delivered to the owner or to another road.

5. An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

6. In case a road delivers an empty foreign car without the consent of the owner to a road which does not pay per diem, or if a road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road, it shall be responsible to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

1051 7. When a car has been destroyed or so damaged as to require an appraisement under the Master Car Builders' Rules the per diem charge will cease from the date of notice to owner.

8. When a car is detained awaiting the receipt of repair material from its owner, the per diem charge will cease from the date the necessary material is ordered from the owner until the date when it is received by the road holding the car.

9. The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named unless otherwise noted thereon. The reports must be sent to the car record office on each day, whether cars are exchanged or not.

In cases where there are different standards of time at junction points the earlier time shall be used.

1052 The Interchange Reports to the car record office from junction points must be signed by the agents or other authorized representatives of both roads on the prescribed form, the receipt of cars delivered being thereby acknowledged.* The time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie*, be the time given by the delivering road.

10. The Junction Report for each day will be made to car owners on the prescribed form as promptly as possible after the receipt of the Interchange Report for that day.

1053 11. Within thirty days after the end of each calendar month car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report. In computing Per Diem the day of receipt should be disregarded and payment made for day of delivery.

12. The settlement of amounts accruing for the use of cars shall be made monthly, without regard to reclaims pending.

13. When reclaims are made for allowances on account of special conditions they must be made by the designated transportation officer of the road which pays the Per Diem to the designated transportation officer of the road from which the allowance is reclaimed.

14. When a road refuses or fails to promptly receive from a connection cars upon which it has laid no embargo, it shall be respon-

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*The first two paragraphs of the present Car Service Rule 5 govern the delivery of a car:

5. Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding and accepted by the car inspector of the receiving road.

Unless otherwise arranged between the roads concerned the receiving road shall be responsible for the cars and contents after receipt of the proper data for forwarding and until they have been accepted by its inspector or returned to the delivering road.

sible to the connection for the Per Diem on cars so held for
1054 delivery, including the Per Diem on the home cars of such connection. If such refusal or failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the Per Diem on all cars in transit which are thus held back for delivery. It shall be the duty of a connection intending to reclaim such Per Diem allowance to notify the delinquent line daily of the total number of cars so held for it.

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded with such traffic at the time such notice is issued. If it does not receive such cars the road holding them may reclaim Per Diem from the road placing the embargo for the number of days such cars are held, not exceeding the duration of the embargo.

After the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

1055 All such notices must be given by telegraph, by the embargoing road, to its immediate connection and by it transmitted as may be necessary.

16. These rules shall not apply to private cars.

17. To interpret these rules and to settle disputes arising under them an Arbitration Committee of five members shall be appointed by the Committee on Car Service. Three members of the Arbitration Committee shall be a quorum.

In case any question or dispute arises under these rules it may be submitted to the Arbitration Committee through the Secretary of the Association in abstract. The abstracts shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decision shall be final. Should one of the parties refuse to furnish the necessary information the Arbitration Committee shall use its
1056 judgment as to whether it can properly decide. All decisions shall be reported to the Association through the Committee on Car Service.

In case a question shall arise not covered by the rules the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

The Committee on Car Service may appoint a secretary for the Arbitration Committee, who shall be paid by the Association. The other expenses of the Arbitration Committee shall be divided equally between each of the parties to the dispute and the Association. The expenses shall be first paid by the Association and then billed to the parties concerned by the Treasurer of the Association

1057 Form —.

East & West Railroad Company.

Interchange Report.

Cars Interchenged with —— R. R. at —— Station, —— —, 190-.

x Loaded. — Empty.

Delivered.			Received.		
Initials.	Number.	X.	Initials.	Number.	X.

I certify that these cars were interchanged as above.

(Signed) ——— ———,
Agent E. & W. R. R.

(Signed) —— ——,
Agent —— R. R.

NOTE 1.—Additional columns may be added to suit local requirements.

NOTE 2.—Separate reports may be made of cars delivered and of cars received.

NOTE 3.—The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named, unless otherwise noted thereon. The reports must be sent to the car record office on each day, whether cars are exchanged or not.

1058 Form —.

East & West Railroad Company.

Junction Report.

On —— —, 190–.

x Loaded. — Empty.

(Printed) (John Smith), (Supt. Transportation.)

Car.		X.	Delivered to	Delivered at
Initials.	Number.			

NOTE.—These reports will generally be made on postal cards.

1059 Form —.

East & West Railroad Company.

Per Diem Report.

Cars of —— R. R., Month of —— —, 190–.

Initials.	Number.	Days per diem rate.	Days penalty rate.	Initials.	Number.	Days per diem rate.	Days penalty rate.
	Total..				Total..		

— days at — cents per day..... $——
— days at — cents per day..... $——

Total..... $——

(Signed) (JOHN SMITH,)
(*Superintendent Transportation.*)

1060

Form 30.

EXHIBIT GABHART No. 1.

Louisville & Nashville Railroad Company.

Lou., Ky., Station, 2, 20, 1903.

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:				
6.20	A	12/3/02	L & N	19648	5.20	A	12/4/02	L	(1 Day)
10.50	P	"	"	19589	11.30	A	"	E	(12 Hrs.)
6.45	A	12/5/02	"	18622	4	P	12/5/02	E	(9 Hrs.)
5.40	A	12/9/02	"	19628	1	P	12/9/02	E	(7 Hrs.)
8.35	A	"	"	18915	"		"	E	(7 Hrs.)
8.50	P	"	"	61009	1.30	P	12/10/02	E	(17 Hrs.)
"		"	"	19725	"		"	E	(17 Hrs.)
"		"	"	19533	"		"	E	(17 Hrs.)
1.40	A	12/10/02	"	19635	"		"	E	(12 Hrs.)
"		"	"	61046	9.40	A	12/11/02	E	(1 Day 8 Hrs.)
6.55	A	12/11/02	"	19558	"		"	E	(3 Hrs.)
9.10	P	"	"	19072	9.00	A	12/13/02	E	(1 Day 12 Hrs.)
5.35	A	12/18/02	"	61021	12.01	P	12/18/02	L	(6 Hrs.)
"		"	"	18963	"		"	L	(6 Hrs.)
7.00	P	"	"	19090	1.30	P	12/19/02	E	(18 Hrs.)
6.00	P	12/20/02	"	18847	12.20	A	12/21/02	E	(6 Hrs.)
4.35	A	12/21/02	"	19716	6.00	A	"	E	(1 Hr. 25 min.)
9.40	A	"	"	18645	3.30	P	"	E	(5 Hrs.)
"		"	"	18826	"		"	E	(5 Hrs.)
11.40	A	"	"	19557	"		"	E	(5 Hrs.)
7.00	A	12/23/02	"	19770	5.00	P	12/23/02	L	(9 Hrs.)

Exhibit Gabhart No. 1.

1061

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:				
6.45	P	12/27/02	L & N	18998	1	P	12/28/02	E	(18 Hrs.)
6.45	A	12/28/02	"	19637	1	P	"	E	(18 Hrs.)
4.40	A	1/1/03	"	18774	4.45	P	1/1/03	E	(12 Hrs.)
12.55	A	1/2/03	"	19601	12.30	P	1/2/03	E	(12 Hrs.)
"		"	"	61006	"		"	E	(12 Hrs.)
8.10	P	1/3/03	"	18956	10.30	A	1/4/03	E	(14 Hrs.)
"		"	"	19780	"		"	E	(14 Hrs.)
7.35	A	1/4/03	"	18502	"		"	E	(3 Hrs.)
"		"	"	18767	"		"	E	(3 Hrs.)
"		"	"	19593	"		"	E	(3 Hrs.)
"		"	"	61009	"		"	E	(3 Hrs.)
9.15	A	1/7/03	"	19744	11.30	A	1/7/03	E	(2 Hrs.)
"		"	"	61043	"		"	E	(2 Hrs.)
6.06	A	1/10/03	"	18049	4.30	P	1/10/03	E	(10 Hrs.)
6.00	A	1/11/03	"	18632	10.20	A	1/11/03	E	(4 Hrs.)
7.55	A	"	"	18774	"		"	E	(4 Hrs.)
10.10	A	"	"	19036	1	P	"	E	(3 Hrs.)
1.05	A	1/14/03	"	18537	9.20	A	1/14/03	E	(8 Hrs.)
"		"	"	19032	"		"	E	(8 Hrs.)
6.30	A	"	"	19610	"		"	E	(3 Hrs.)

1062

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:				
6.55 A	1/16/03	L & N	18919		10.00 A	1/16/03	E	(3 Hrs.)
"	"	"	19765		"	"	E	(3 Hrs.)
7.55 A	1/18/03	"	19592		10.15 A	1/18/03	E	(2 Hrs.)
"	"	"	18908		"	"	E	(2 Hrs.)
"	"	"	18806		"	"	E	(2 Hrs.)
9.20 P	"	"	18700		8.00 A	1/19/03	E	(12 Hrs.)
10.35 A	1/20/03	"	18662		1.30 P	1/20/03	E	(3 Hrs.)
6.30 P	1/20/03	"	18796		9.35 A	1/21/03	E	(15 Hrs.)
10.20 P	"	"	19019		"	"	E	(11 Hrs.)
"	"	"	18527		"	"	E	(11 Hrs.)
6.45 A	1/21/03	"	18981		"	"	E	(3 Hrs.)
"	"	"	61005		"	"	E	(3 Hrs.)
4.43 A	1/22/03	"	18910		11.30 A	1/22/03	E	(7 Hrs.)
"	"	"	18700		"	"	E	(7 Hrs.)
5.20 A	1/23/03	"	19006		11.30 A	1/23/03	E	(6 Hrs.)
"	"	"	18605		"	"	E	(6 Hrs.)
"	"	"	19136		"	"	E	(6 Hrs.)
"	"	"	61047		"	"	E	(6 Hrs.)
6.08 A	1/24/03	"	19018		8.50 A	1/24/03	E	(3 Hrs.)

1063

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:				
7.20 A	1/25/03	L & N	19034		9.30 A	1/25/03	E	(2 Hrs.)
"	"	"	19063		"	"	E	(2 Hrs.)
"	"	"	19753		"	"	E	(2 Hrs.)
9.35 A	"	"	18825		11.00 A	"	E	(1 Hr. 25 m.)
"	"	"	19131		"	"	E	(1 Hr. 25 m.)
6.25 A	1/27/03	"	18722		9.50 A	1/27/03	E	(3 Hrs.)
9.10 P	"	"	18667		12.15 P	1/28/03	E	(15 Hrs.)
"	"	"	19519		"	"	E	(15 Hrs.)
4.45 A	1/28/03	"	18614		"	"	E	(7 Hrs.)
2.10 P	"	"	18798		9.55 P	"	E	(8 Hrs.)
9 P	"	"	18783		9.30 A	1/29/03	E	(12 Hrs.)
4.55 A	1/30/03	"	19060		11.00 A	1/30/03	E	(6 Hrs.)
"	"	"	19000		"	"	E	(6 Hrs.)
"	"	"	18687		"	"	E	(6 Hrs.)

M. H. GABHART.

1064

Form 30.

EXHIBIT GABHART No. 2.

Louisville & Nashville Railroad Company.

Lou., Ky., Station, 2, 19, 1903.

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:				
9.30 A	11/24/01	L & N	19535		1.30 P	11/24/01	E		
8.25 A	11/27/01	"	18525		11.40 A	11/27/01	E		
11.35 A	11/28/01	"	19653		3.30 P	11/28/01	E		
10.54 P	11/28/01	"	19076		11.20 A	11/29/01	E	(½ Day)	
5.42 P	11/29/01	N C & St. L	9062		2.40 P	11/30/01	E	(20 Hrs.)	
9.00 P	11/30/01	L & N	18725		9.30 A	12/1/01	E	(12 Hrs.)	
9.48 P	"	"	18947		"	"	E	(12 Hrs.)	
6.35 A	12/1/01	"	19779		"	"	E		
"	"	"	19557		9.30 A	12/1/01	E		
"	"	"	19791		"	"	E		
"	"	"	19526		"	"	E		
9.42 A	"	"	18913		3.15 P	"	E	(6 Hrs.)	
1.10 P	"	"	19532		"	"	E		
"	"	"	19066		"	"	E		
6.55 P	"	"	18664		11.25 A	12/3/01	E	(1¾ Days)	
5.45 A	12/5/01	"	19565		2.00 P	12/5/01	E	(8 Hrs.)	
7.00 P	"	"	19632		2.45 A	12/6/01	E	(7 Hrs.)	
"	"	"	19681		"	"	E	(7 Hrs.)	
9.05 P	"	"	19793		"	"	E	(5 ")	
10.08 P	12/7/01	"	19565		11.50 A	12/8/01	E	(12 ")	
"	"	"	19592		"	"	E	(12 ")	

1065

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
7.30	A	12/8/01	L & N	19532		11.50	A	12/8/01	E	(4 Hours)
"		"	"	19503		"		"	E	(" ")
"		"	"	18537		"		"	E	(" ")
5.56	P	"	"	61019		10.20	A	12/9/01	E	(16 Hours)
7.05	P	12/10/01	"	18572		7.00	A	12/11/01	L	(12 ")
7.40	A	12/11/01	"	18913		11.40	A	"	E	(4 Hours)
8.35	A	"	"	61069		"		"	E	
5.58	A	12/12/01	"	61076		12.30	P	12/12/01	L	(6 Hours)
"		"	"	19070		11.15	A	12/12/01	E	(5 ")
9.35	P	12/14/01	"	18728		10.30		12/15/01	E	(13 Hours)
"		"	N C & St. L	2421		"		"	E	(")
7.55	A	12/15/01	L & N	18537		3.40	P	"	E	(7 Hrs.)
"		"	"	18716		"		"	E	(")
11.23	A	"	"	19797		"		"	E	(4 Hours)
"		"	"	18913		"		"	E	(4 Hours)
1.30	P	"	"	19792		5.00	P	"	E	
2.55	P	"	N C & St. L	9036		"		"	E	
"		"	"	9039		"		"	E	
6.05	A	12/17/01	L & N	18667		11.20	A	12/17/01	E	(5 Hrs.)
11.20	A	"	"	19694		2.50	P	"	E	
6.45	P	"	"	61056		2.23	P	12/18/01	E	(19 Hours)
9.15	P	"	"	18911		"		"	E	(")

1066

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
9.15	A	12/18/01	L & N	19606		2.23	P	12/18/01	E	(5 Hrs.)
"		"	"	19636		2.23	P	12/18/01	E	(")
"		"	"	19725		"		"	E	(")
10.33	A	12/19/01	"	18090		1.30	P	12/19/01	E	
"		"	"	18987		"		"	E	
"		"	"	19065		"		"	E	
"		"	"	18715		"		"	E	
9.30	P	"	"	61062		6.15	P	12/21/01	E	(1¾ Days)
9.25	A	12/20/01	"	18736		"		"	E	(1½ ")
5.00	P	12/21/01	"	19549		6.41	P	12/23/01	L	(2 Days)
9.15	A	12/22/01	N C & St. L	2420		12.05	P	12/22/01	E	
6.40	P	"	L & N	19665		3.05	A	12/23/01	E	(8 Hours)
"		"	"	18987		"		"	E	(")
11.30	P	"	"	19716		9.20	A	"	E	(10 Hours)
3.18	A	12/23/01	"	19543		"		"	E	(6 ")
11.25	A	12/29/01	"	18623		9.55	P	12/29/01	E	(10 ")
3.10	P	12/30/01	"	18543		5.40	P	12/30/01	L	
"		"	"	18923		"		"	L	
6.05	P	"	"	19780		2.47	P	1/1/02	L	(1¾ Days)
10.15	P	"	"	18519		2.45	P	12/31/01	L	(14 Hours)
6.45	A	12/31/01	N C & St. L	9033		12.15	P	12/31/01	E	(6 Hours)

1067

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
8.20	A	1/1/02	N C & St. L	9110		2.47	P	1/1/02	E	(6 Hrs.)
10.45	P	"	L & N	18939		3.30	P	1/4/02	L	(2½ Days)
8.00	A	1/2/02	"	18722		1.15	P	1/6/02	L	(3½ Days)
9.00	A	1/3/02	N C & St. L	9103		11.48	A	1/4/02	E	(1 Day 2 Hrs.)
9.13	A	1/4/02	L & N	19792		"		"	E	
"		"	"	19014		"		"	E	
7.55	P	"	"	61014		11.12	P	"	E	
"		"	"	18715		"		"	E	

5.45 A	1/5/02		"	61043	9.40 A	1/6/02	E	(1 Day)
"	"		"	18519	"	"	E	(")
"	"		"	19594	"	"	E	(")
11.20 A	"		"	19573	"	"	E	(")
"	"		"	18747	"	"	E	(")
1.25 P	"		"	18706	"	"	E	(¾ of Day)
"	"		"	19099	"	"	E	(")
"	"		"	19748	"	"	E	(")
5.00 P	"		"	61050	7.15 P	"	L	(1 Day)
6.40 A	1/6/02		"	19752	8.35 P	"	E	(½ Day)
7.40 A	1/7/02		"	18685	4.40 P	1/13/0	L	(5½ Days)
7.55 P	"		"	19607	10.35 A	1/8/02	E	(15 Hours)
7.22 A	1/8/02	N C & St. L		9032	"	"	E	
"	"	L & N		18918	10.35 A	1/8/02	E	

1068

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:			
5.20 A	1/9/02	L & N		19616	4.10 P	1/9/02	E	(½ Day)
"	"	"		19598	"	"	E	(")
7.30 A	"	"		19676	4.05 P	1/10/02	L	(1½ Day)
"	"	"		18855	4.40 P	1/13/02	L	(4¼ Day)
9.55 A	1/10/02	N C & St. L		9019	1.00 P	1/10/02	E	
8.50 A	1/12/02	L & N		19529	11.15 A	1/12/02	E	
"	"	"		19711	"	"	E	
"	"	"		18640	"	"	E	
12.10 P	"	"		19732	2.00 P	"	E	
"	"	"		18733	"	"	E	
12.35 A	1/13/02	"		19700	6.15 P	1/13/02	L	(5 Hrs.)
10.05	1/14/02	"		19571	7.30 A	1/16/02	L	(1½ Days)
7.38 A	1/15/02	"		18964	7.30 P	1/20/02	L	(4½ ")
9.46 A	1/16/02	N C & St. L		9091	9.35 A	1/18/02	E	(2 Days)
5.12 A	1/17/02	L & N		19522	12.10 P	1/17/02	E	(7 Hrs.)
"	"	"		19695	"	"	L	(")
12.10 A	1/18/02	N C & St. L		9075	11.05 A	1/19/02	E	(1½ Days)
6.40 P	"	L & N		18813	"	"	E	(¾ Day)
7.45 A	1/19/02	"		19695	"	"	E	(4 Hours)
"	"	"		19680	"	"	E	(")
"	"	"		19577	"	"	E	(")

1069

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:			
7.45 A	1/19/02	L & N		18507	11.05 A	1/19/02	E	(4 Hrs.)
"	"	"		61095	"	"	E	(4 ")
"	"	"		19006	"	"	E	(")
"	"	"		18727	"	"	E	(")
"	"	"		19795	"	"	E	(")
"	"	"		19011	"	"	E	(")
"	"	"		19076	"	"	E	(")
10.47 A	"	"		19536	7.30 P	1/20/02	L	(1½ Days)
"	"	"		19503	"	"	L	(")
10.00 A	1/21/02	"		61073	8.05 P	1/27/02	L	(6¼ Days)
8.10 A	1/22/02	"		18547	11.15 A	1/22/02	E	
7.35 A	1/23/02	"		18715	11.55 A	1/24/02	E	(1 Day)
7.47 P	"	"		19071	"	"	E	(")
"	"	"		18979	"	"	E	(")
12.05 P	1/26/02	"		18605	3.00 P	1/26/02	E	
11.00 P	1/30/02	"		61018	4.45 A	1/31/02	E	(6 Hrs.)
3.45 A	1/31/02	"		61071	5.40 P	2/4/02	L	4½ Days)

1070

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
10.05	A	2/2/02	L & N		19746	7.05	P	2/3/02	L	(1½ Days)
"		"	"		18830	3.00	P	2/2/02	E	(5 Hrs.)
"		"	"		19113	"		"	E	(")
"		"	"		19791	"		"	E	(")
"		"	"		19534	"		"	E	(")
"		"	"		19565	"		"	E	(")
10.45	P	"	"		19671	6.00	A	2/3/02	E	(7 Hrs.)
"		"	"		19800	"		"	E	(")
7.30	P	2/5/02	"		19725	5.05	A	2/6/02	E	(½ Day)
"		"	"		19650	"		"	E	(")
"		"	"		19565	"		"	E	(")
11.55	A	2/6/02	"		19550	5.50	P	"	L	(6 Hrs.)
10.30	P	2/8/02	"		19791	8.00	P	2/10/02	L	(1¾ Days)
3.08	P	2/9/02	"		18503	11.58	A	2/14/02	E	(5 Days)
12.31	P	2/11/02	"		18689	"		"	E	(3 ")
11.50	P	"	"		18849	9.10	A	2/12/02	E	(10 Hrs.)
5.50	A	2/12/02	"		19701	"		"	E	
10.25	A	"	"		19535	1.20	P	"	L	
"		"	"		18709	6.40	P	"	E	(8 Hrs.)
7.53	A	2/14/02	"		19749	11.58	A	2/14/02	L	

1071

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
7.35	A	2/16/02	L & N		61079	4.15	A	2/18/02	L	(2 Days)
10.00	A	"	"		19010	"		"	L	(1¾ Days)
2.20	P	"	"		19709	5.20	P	2/16/02	E	
11.50	P	2/20/02	"		19011	5.20	P	2/21/02	E	(1¼ Days)
8.00	P	2/21/02	"		19749	1.15	P	3/3/02	L	(8¾ Days)
11.30	P	2/22/02	"		18806	10.45	A	2/23/02	E	(12 Hrs.)
5.46	A	2/23/02	"		18638	"		"	E	(5 Hrs.)
"		"	"		18618	"		"	E	(5 ")
7.20	A	"	"		19787	"		"	E	(4 Hrs.)
"		"	"		19500	"		"	E	(")
"		"	"		19741	"		"	E	(")
9.55	P	2/25/02	"		18623	11.07	A	2/26/02	E	(12 Hrs.)
8.25	P	2/26/02	"		18916	11.25	A	2/27/02	E	(13 Hrs.)
"		"	"		18831	"		"	E	(")
3.30	A	2/27/02	"		19105	"		"	E	(8 Hrs.)
6.55	P	"	"		19545	1.03	P	2/28/02	E	(20 Hrs.)
"		"	"		18809	"		"	E	(")

1072

Cars del. to C. S. Yds at 7 & Mag.:						Cars returned from C. S. Yds L or E:				
6.55	A	3/2/02	L & N		18712	10.00	A	3/2/02	E	
"		"	"		19039	"		"	E	
8.55	A	"	"		19105	4.00	P	"	E	(8 Hrs.)
10.45	A	"	"		19640	"		"	E	(5 Hrs.)
"		"	"		19099	"		"	E	(")
8.20	P	2/3/02	"		18658	11.40	A	3/7/02	E	(3 Days 15 Hrs.)
7.50	P	3/5/02	"		19080	2.30	P	3/6/02	E	(¾ Day)
"		"	"		18809	"		"	E	(")
10.05	A	3/6/02	"		18722	"		"	E	
3.34	A	3/9/02	"		19585	5.20	P	3/9/02	E	(10½ Days)
7.20	A	"	"		19793	11.30	A	3/20/02	E	(11 Days)
"		"	"		18845	3.00	P	3/9/02	E	(8 Hrs.)
12.28	P	"	"		19610	No record returning (Note)				
5.10	A	3/14/02	"		19710	1.20	P	3/26/02	L	(12 Days)
2.40	A	3/15/02	"		19501	2.15	P	3/16/02	E	(1½ Days)
9.00	A	3/16/02	"		61087	"		"	E	(5 Hrs.)
"		"	"		61029	"		"	E	(")
"		"	"		19621	"		"	E	(")
12.20	P	"	"		19500	"		"	E	
9.05	P	"	"		18781	8.35	A	3/18/02	E	(1½ Days)

1073

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:			
9.48 A	3/18/02	L & N	19775		11.00 A	3/19/02	E	(1 Day)
7.10 A	3/19/02	"	61076		"	"	E	
9.00 P	"	"	19573		11.30 A	3/20/02	E	(¾ Day)
3.45 A	3/20/02	"	19707		"	"	E	(7 Hrs.)
7.45 P	"	"	18733		1.00 P	3/21/02	E	(¾ Days)
9.40 A	3/21/02	"	19545		"	"	E	
"	"	"	18959		"	"	E	
12.45 A	3/23/02	"	61071		10.45 A	3/23/02	E	12 Hrs.)
"	"	"	19565		"	"	E	(")
"	"	"	19545		"	"	E	(")
11.48 A	"	"	19654		11.05 A	3/31/02	L	(8 Days)
7.30 A	3/26/02	"	19656		1.30 P	3/26/02	E	(6 Hrs.)
"	"	"	18719		"	"	E	(")
7.17 P	3/29/02	"	19676		11.10 A	3/30/02	E	16 Hrs.)
11.15 P	"	"	19003		"	"	E	(12 Hrs.)
5.15 A	3/30/02	"	18429		"	"	E	(7 Hrs.)
"	"	"	19565		"	"	E	(")
"	"	"	19734		"	"	E	(")
"	"	"	19728		"	"	E	(") .
"	"	"	19574		"	"	E	(")
"	"	"	19780		"	"	E	(")

1074

Cars del. to C. S. Yds at 7 & Mag.:					Cars returned from C. S. Yds L or E:			
5.15 A	3/30/02	L & N	18678		11.10 A	3/30/02	E	(7 Hrs.)
"	"	"	18810		"	"	E	(")
9.50 A	"	"	19070		4.40 P	4/1/02	E	(2 Days 7 Hrs.)
10.30 A	3/31/02	"	19774		"	"	E	(1 Day 7 Hrs.)
5.43 P	"	"	19625		11.00 A	4/4/02	E	(3½ Days)
9.30 A	4/1/02	"	61080		4.40 P	4/1/02	E	(6 Hrs.)
2.55 A	4/3/02	"	19725		11.00 A	4/4/02	E	(1 Day 8 Hrs.)
5.10 A	"	"	19117		"	"	E	(1 Day 6 Hrs.)
6.47 P	"	"	61054		"	"	E	(16 Hrs.)
4.30 A	4/4/02	"	19579		"	"	E	(6 Hrs.)

M. H. GABHART.

1075

Form 30.

EXHIBIT GABHART No. 3.

Louisville & Nashville Railroad Company.

Lou., Ky., Station, 3, 20, 1903.

Cars del. to Ky. & Lou. Sidings:					Cars returned from Ky. & Lou. Sidings, L or E:			
9.25 A	12/15/02	L & N	10215	to Ky.	8.10 P	12/21/02	E	(6 Days)
5.15 P	"	"	9449	"	3.30 A	12/17/02	E	(2 Days)
2.40 A	12/16/02	"	6160	"	2.30 A	12/19/02	E	(3 Days)
11.25 A	"	"	13049	"	3.30 A	12/18/02	L	(2 Days)
8.00 A	12/17/02	"	17146	"	4.00 P	12/20/02	E	(3 Days)
"	"	"	6948	"	"	"	E	(3 Days)
9.00 P	"	"	2527	to Lou	1.30 P	12/23/02	E	(6 Days)
2.25 A	12/18/02	"	8489	to Ky.	10.10 A	12/24/02	E	(6 Days)
5.00 A	12/19/02	"	4955	"	9.00 A	12/23/02	E	(4 Days)
"	"	"	2868	"	"	"	E	(4 Days)
2.20 P	"	"	2229	"	3.15 P	12/26/02	E	(7 Days)
9.40 A	12/20/02	"	6446	"	4.30 A	12/24/02	E	(4 Days)
12.45 A	12/21/02	"	9352	"	10.10 A	"	E	(3 Days)
9.40 A	"	"	6220	"	4.30 A	12/24/02	E	(3 Days)
3.30 P	"	"	7805	"	2.50 A	12/25/02	L	(4 Days)

4.35	A	12/23/02	"	10300	"	9.30	P	12/26/02	E	(3 Days)
"		"	"	10798	"	8.50	A	12/28/02	E	(5 Days)
4.00	A	12/24/02	"	14015	"	3.30	A	1/5/03	E	(12 Days)
6.00	P	12/25/02	"	25282	"	4.30	P	12/28/02	E	(3 Days)
"		"	"	6101	"	8.50	A	12/28/02	E	(3 Days)
"		"	"	8614	"	10.00	A	12/30/02	E	(5 Days)
"		"	"	6278	"	4.45	P	1/1/03	E	(7 Days)

1076

Cars del. to Ky. & Lou. Sidings: Cars returned from Ky. & Lou. Sidings, L or E:

7.00	A	12/26/02	L & N	7506	to Ky.	8.10	P	12/29/02	E	(3 Days)
7.20	A	"	"	5324	"	10.50	A	1/3/03	E	(8 Days)
3.15	P	"	"	2229	"	8.50	A	12/28/02	L	(2 Days)
2.30	A	12/27/02	"	12511	"	10.00	A	12/30/02	E	(3 Days)
6.45	A	12/28/02	"	6282	"	10.00	A	12/30/02	E	(2 Days)
"		"	"	6555	"	10.50	A	1/3/03	E	(6 Days)
10.15	A	"	"	12800	"	3.45	P	1/4/03	E	(7 Days)
6.05	P	"	"	32686	"	10.00	A	12/30/02	E	(2 Days)
6.55	P	"	"	5157	"	10.50	A	12/31/02	E	(3 Days)
4.15	P	12/29/02	"	23612	"	10.50	A	1/3/03	E	(5 Days)
"		"	"	8247	"	10.50	A	12/31/02	E	(2 Days)
"		"	"	2774	"	10.50	A	1/3/03	E	(5 Days)
"		"	"	9843	"	10.50	A	12/31/02	E	(2 Days)
12.05	A	12/30/02	"	12755	"	10.50	A	1/3/03	E	(4 Days)
8.30	A	"	"	10193	"	"		"	E	(4 Days)
12.30	P	12/31/02	"	6793	"	9.10	P	"	E	(3 Days)

1077

Cars del. to Ky. & Lou. Sidings: Cars returned from Ky. & Lou. Sidings, L or E:

10.15	A	1/2/03	L & N	7609	to Ky.	9.30	A	1/6/03	E	(4 Days)
4.45	P	"	"	12577	"	9.10	P	1/3/03	E	(1 Day)
"		"	"	14208	"	"		"	E	(1 Day)
8.30	P	1/5/03	"	14189	"	9.00	A	1/9/03	E	(4 Days)
4.00	A	1/6/03	"	25261	"	10.30	A	1/22/03	E	(16 Days)
"		"	"	5058	"	2.25	A	1/12/03	E	(6 Days)
"		"	"	2276	"	8.50	A	1/11/03	E	(5 Days)
11.00	A	"	"	9506	"	10.30	A	1/8/03	L	(2 Days)
5.30	P	"	"	23607	"	9.00	A	1/9/03	E	(3 Days)
"		"	"	13843	to Lou	8.40	A	1/13/03	E	(7 Days)
4.00	A	1/7/03	"	15153	to Ky.	8.50	A	1/11/03	E	(4 Days)
7.20	A	"	"	13694	"	4.15	P	1/9/03	L	(2 Days)
4.10	A	1/8/03	"	15695	"	4.00	A	1/13/03	E	(5 Days)
"		"	"	11542	"	"		"	E	(5 Days)
"		"	"	11467	"	8.50	A	1/11/03	E	(3 Days)
5.00	P	1/9/03	"	3082	"	9.30	P	"	L	(2 Days)
5.30	P	"	"	9592	"	10.30	A	1/17/03	E	(8 Days)
3.25	P	1/10/03	"	3239	"	4.00	A	1/13/03	E	(3 Days)
2.15	A	1/11/03	"	2525	"	10.45	A	1/15/03	E	(4 Days)
7.00	A	"	"	15685	"	4.45	A	1/14/03	E	(3 Days)
7.00	A	"	"	10744	"	No record returning				(Note)

1078

Cars del. to Ky. & Lou. Sidings: Cars returned from Ky. & Lou. Sidings, L or E:

11.25	P	1/13/03	L & N	6035	to Ky.	10.30	A	1/17/03	E	(4 Days)
2.55	P	1/14/03	"	14002	"	3.15	P	1/18/03	E	(4 Days)
6.00	P	"	"	2043	"	10.30	A	1/17/03	E	(3 Days)

M. H. GABHART.

1079 EXHIBIT GABHART 4.

Louisville & Nashville Railroad Company.

Lou., Ky., Station, 3, 5, 1903.

Live Stock Received from C. S. Y'ds During the Months of Jan. & Feb., 1903, Destined to Points via Lou. Beyond Lou., Ky.

5.20 P., 1/3/03...	S. W. S. C.....	852..	Winchester, Ky.
4.40 P., 1/25/03..	P. S. E.....	10496..	East Cambridge, Mass.
6.00 P., 2/4/03...	P. F. W. C.....	6664..	Balt., Md.

M. H. GABHART.

1080 Pleas Before the Honorable the Court of Appeals of Kentucky at the Capitol at Frankfort on the 15th day of November A. D. 1906.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Appeal from Jefferson Circuit Court, Chancery Branch, First Division.

Be it remembered that the appellant by its attorney, on the 30th day of May A. D. 1904 filed in the office of the Clerk of the Court of Appeals, a transcript of the record herein, including two volumes of depositions, and two volumes of exhibits, and which are as follows:

1081 Central Stock Yards Company, Incorporated.

P. O. LOUISVILLE, KY., *Dec.* 18, 1902.

DEAR SIR: Having had almost a unanimous response to our circular letter dated the 12th inst. accompanied by our circular No. 4, as promised, we have made, effective today, a rate of 75c. per bushel on Corn instead of $1.00; and $1.00 per 100 lbs. on Hay instead of $1.50. The best quality to be had will be furnished. Thanking you for prompt action,

We remain, respectfully,

J. H. ...SHCRAFT, JR.,
Secretary and Treasurer.

"Exhibit Watkins No. 1."

Approved:
IRA F. BRAINARD, *Pres.*

1082 Ira F. Brainard, Presid nt; Rush C. Watkins, Vice Pres. & Traffic Mngr.; Jos. W. Byrne, Superintendent; J. H. Ashcraft, Jr., Sec'y & Treas.

Central Stock Yards Company, Incorporated.

Central Stock Yards, Jefferson County, Ky. P. O., Louisville, Ky.

Central stock yards.
Yards at South Louisville covering 26 acres.

DECEMBER 10, 1902.

Circular No. 4.

Advantages which the Central Stock Yards Company Have Been Able to Secure and Offer the Live Stock Shippers to this Market.

Shippers on the Southern Railway in Ky. were given the Louisville proper rates to Central Stock Yards, Ky., saving them a terminal charge of $2.00 per car.

To shippers on the St. Louis Division of the Southern Railway the same terminal charge was saved, in addition to which a reduction in rates on Cattle, car loads, 1c. to 3c.; Hogs 1½ to 3c., and sheep 1½ to 3½c. per 100 lbs. was made in order to place our market on an equitable bases.

Rates from all stations on the Illinois Central Railroad were reduced $2.00 per car on all classes of Live Stock.

1083 On all Live Stock from or to the L. H. & St. L.—P. C. C. & St. L.—C. I. & L.—B. & O. S-W—C. C. C. & St. L.—C. & O. railroads rates were reduced $1.00 per car account of the terminal charges being reduced $1.00 per car.

The terminal service was greatly improved, the competition demanding it.

We hear few complaints from shippers to either yards now, but prior to this the delays were serious, in many cases damaging, to all shippers from all roads entering Louisville.

Charges for Yardage and Weighing.

	Old rates.	New rates.	Saving about
Cattle.....	20c. per head	10c. per head	$3.00 per car
Calves.....	10c. " "	5c. " "	
Hogs.....	7c. " "	4c. " "	$3.00 " "
Sheep and Lambs...	5c. " "	3c. " "	$5.00 " "

Filed May 30, 1904.

J. MORGAN CHINN, *Clk.*

Commissions for Selling Cattle.

Old rate 75c. per head maximum of $18.00 per car.
New rate 50c. per head maximum of $12.00 per car—saving $6 per car. All told making a saving to shippers of from $10.00 to $15.00 per car.
The Southern Railway makes deliveries from or to all lines entering Louisville, without discrimination as to point of origin or
1084 destination, thereby causing sharp competition between the lines for business both ways, something that has never existed prior to the inauguration of the Central Stock Yards.
Taking these advantages into consideration, with proper support from the shippers, we can make this one of the largest and best markets in the country.

Yours very truly,

R. C. WATKINS,
Traffic Manager.

"Exhibit Watkins No. 2."

1085

Southern Railway Company.
H. B. Spencer, General Manager.
St. Louis-Louisville Lines.
Office of General Manager, Chemical Building.

ST. LOUIS, MO., *Dec.* 19, 1902.

P. 19,874.

Mr. R. C. Watkins, Traffic Manager, Central Stock Yards, Louisville, Ky.

DEAR SIR: I have arranged to have the switching engine making deliveries of stock to your yards, reaching us from the Louisville & Nashville Railroad, to wait until the cars are unloaded and promptly handle them for delivery back — the L. & N. R. R.
It is very essential that there be absolutely no delay to such cars, and to enable us to carry out the plan it will be necessary to have your co-operation. Please instruct your employés to work with our people with a view to carrying out the arrangement.
Thanking you in advance for your assistance in the matter, I am,

Yours truly,

H. B. SPENCER,
General Manager.

"Exhibit Watkins No. 3."

1086

DECEMBER 20, 1902.

Mr. H. B. Spencer, general manager So. Ry., St. Louis.

DEAR SIR: Yours 19th inst. file 19874 relative to the prompt handling of L. & N. stock cars: We have been handling these cars very promptly—usually unloading and letting them go back on return trip of switch engine but will do so now in every case and relieve the engine promptly. We unload cars very quickly at our yards—account of having every convenience for doing so—and can handle a

great number with dispatch. Have instructed Superintendent Mr. Byrne and he will see that you have no delay.

Yours truly,

____ ____,

Traffic Manager.

J. W. B.:

Please note & see that L. & N.'s are unloaded promptly, so that cars can go back with returning Switch Engine.

R. C. W.

Dec. 22, 1902.

The above will be carried out.

J. W. B.

"Exhibit Watkins No. 4."

1087 This agreement, made this May 1, 1901, by and between the Southern Railway in Kentucky, a corporation organized under the laws of the State of Kentucky, and hereinafter called the Railway Company, of the first part, and the Central Stock Yards Company, a corporation duly organized under the laws of the State of Delaware, and hereinafter called the Stock Yards Company, of the second part,

Witnesseth, as follows: The Stock Yards Company is incorporated under the laws of the State of Delaware, with the right to do business in Louisville and Jefferson County, Kentucky, and is the owner of certain property situated on what would be Floyd Street, if extended, adjoining the right of the Railway Company.

The Railway Company is a corporation organized under the laws of the State of Kentucky, and besides owning and operating a line of railroad in Kentucky, has connections, directly and indirectly, with divers other lines of railroad in and out of the State of Kentucky.

1088 The Railway Company desires to establish a general live stock depot for the receiving and delivery of live stock at Louisville, Kentucky, and the said Stock Yards Company is willing to furnish to the said Railway Company proper facilities therefor.

Now, in consideration of the premises, it is agreed between the parties hereto as follows:

1. The Stock Yards Company agrees to build, maintain and operate upon its property described as above, modern and complete stock yards, with all necessary buildings and pens for the comfortable, safe and convenient handling of stock, and loading and unloading the same, and to continue to maintain and operate the said stock yards during the existence of this agreement.

2. The said Stock Yards Company agrees that it will receive live stock of all kinds from said Railway Company or for said Railway Company at its stock yards and premises as aforesaid, and will, for receiving and caring for and delivery of stock, charge not 1089 more than fifty (50) cents per car for unloading, and fifty (50) cents per car for loading, to be paid by the said Railway Company when, and only when, the stock is brought to or shipped from

uisville over the lines of the said Railway Company including the Louis-Louisville line of the Southern Railway Company. No arge is to be made for loading or unloading where less than a car d rate is charged for the shipment as per way-bill; and when the ilway Company receives only a switching charge from connecting es, the loading or unloading charge is not to be paid by the said ilway Company.

3. The Stock Yards Company is to be responsible to the Railway mpany, and to the shipper or consignee, for all accidents in load- g or unloading said stock, or while the same is in its possession, d is to indemnify and save harmless the Railway Company against y loss arising from any injury to said stock in loading or unload- g, or awaiting loading or unloading while in its possession; and id stock is to be considered as in the possession of the Stock Yards ompany from the time the loaded cars are put on its siding, or from the time the said Stock Yards Company is notified of the 00 readiness of the said Railway Company to put the said cars upon its said siding, and the said Stock Yards Company is nable, from some disability or fault of its own, to receive the same. ut the Railway Company is to be responsible for any loss which ay occur from any default on its part in placing cars at the load- g chutes to be unloaded, or taking away the same after they are aded ready for transportation.

4. The Railway Company agrees to, and does hereby, establish he premises of the Stock Yards Company as its live stock depot for he purpose of handling live stock to and from Louisville, and agrees hat during the existence of this agreement it will not sell, lease, use r license to be used, any of its ground in or adjacent to the City of Louisville, for the establishment of any other stock yard or stock yards r otherwise facilitate the establishment of any stock yard for the said ity, and will establish no other live stock depot at or adjacent to said city, and will not deliver live stock to any other stock yard 1091 now or hereafter established in Louisville, unless so positively required and exacted by the shipper. And, in the event that delivery to any other stock yard is so required, the Railway Company will not absorb, except from competitive points, any part of the switching charge assessed by connecting line or lines.

5. The Railway Company agrees to establish Louisville rates to and from the premises of said Stock Yards Company on all live stock coming from or going to lines embraced in the following specifica- tion, and the said Louisville rates shall include delivery to, or cost of handling from, the chutes or pens of the Stock Yards Company, namely:

Points on the St. Louis Division of the Southern Railway, includ- ing St. Louis and East St. Louis, and traffic handled via those junctions.

Points on its own lines, including local, as well as junction points.

Points on the Cincinnati, New Orleans & Texas Pacific Railway between Cincinnati and Chattanooga, including local, as well as junction points.

1092 Points on connecting lines between its own line and the Cincinnati, New Orleans & Texas Pacific Railway, namely, Frankfort, Cincinnati, Lexington & Eastern—Louisville & Atlantic, and such other connections as may hereafter be made.

Points south of Harriman Junction and south of Chattanooga, including business originating on foreign lines, handled by the Southern Railway to Harriman Junction, or delivered to the Cincinnati, New Orleans & Texas Pacific Railway at Chattanooga, by the Southern Railway Company or by any other line.

6. The Railway Company agrees to perform switching service between the Stock Yards Company and connections with other lines in Louisville as per the following schedule, and the said switching rates shall include delivery to or cost of handling from the chutes or pens of the Stock Yards Company.

Between the Illinois Central R. R. at 14th and Magnolia streets, or any other connection which may be hereafter established in the City of Louisville, and

1093 the Central Stock Yards Company..... $2 per car.

Between the L. H. & St. L. Ry. at 14th and Magnolia streets, or any other connection which may be hereafter established in the city of Louisville and the Central Stock Yards Company ..... $2.00 per car

Between the B. & O. S. W. Youngtown or other connection that may hereafter be established in the City of Louisville, and The Central Stock Yards Company ..... $2 per car

Between the L. N. A. & C. or C. I. & L., Youngtown or any other connection that may hereafter be established in the City of Louisville, and the Central Stock Yards Company..... $2 per car

Between the L. & N. R. R. at 4th Avenue and the Central Stock Yards Company..... $2 per car

1094 Between the L. & N. R. R. at 7th and Magnolia or such other connection as may hereafter be established in the City of Louisville, and the Central Stock Yards Company except 4th avenue ..... $2 per car

Between the P. C. C. & St. L. via I. C. R. R. at 14th and Magnolia streets, or such other connection as may hereafter be established in the City of Louisville, and the Central Stock Yards Company as Southern Railway proportion of joint switching ..... $1 per car

Between the C. C. C. & St. L. via I. C. R. R. at 14th and Magnolia streets, or such other connection as may hereafter be established in the City of Louisville, and the Central Stock Yards Company as Southern Railway proportion of joint switching rate ..... $1 per car

1095 Between the C. & O. R. R. via I. C. R. R. at 14th and Magnolia streets, or such other connections as may hereafter be established in the City of Louisville, and the Central Stock Yards Company as Southern Railway proportion of joint switching rate..... $1 per car

Form 114.—Revised November, 1899.

LOUISVILLE & NASHVILLE RAILROAD COMPANY'S

CONTRACT

FOR THE TRANSPORTATION OF LIVE STOCK OVER ITS OWN LINES.

Woodlawn Ky Station, Nov. 2 1901

This contract entered into at the above time and place between the Louisville & Nashville Railroad Company, hereinafter called the carrier, and J J Brown hereinafter called the shipper,

WITNESSES, That the carrier will carry live stock at the rates established by it therefor, or, where certain risks, duties, and liabilities are assumed by the shipper, as hereinafter specified, will carry such live stock at greatly reduced rates and (if shipped in car-load quantities) will furnish the shipper or his agent free transportation on the train with said live stock.

In the present instance the shipper elects to avail himself of the said reduced rate and (if shipped in car-load quantities) free passage for himself or his agent on the train with said live stock, and has delivered on the cars of the carrier the following described live stock, to wit:

CONSIGNEE, DESTINATION, &c.	DESCRIPTION OF STOCK	Car Number
J J Brown Central Stock Yds Louisville Ky Care L & N R R Co	30 Cattle "No 1" Shipped for Mr McCampbell	L & N 19570

Car Louv. & N. R.R. Co. "Eyth" Dec. 21 1898 Dropped Delivery

CHARGES, $.....

The carrier agrees to transport said live stock to destination if on said carrier's line of railroad, otherwise to the place where said live stock is to be received by the next connecting carrier for transportation to or towards destination, and the carrier guarantees that the freight rate thereon from point of shipment to destination shall not exceed the reduced rate of 13 00 per Car.

In consideration of all of which the shipper hereby agrees to assume the risks, duties, and liabilities hereinafter specified, and that the transportation shall be upon the following conditions, which are admitted and accepted by said shipper as just and reasonable, viz.:

1. The shipper hereby releases the carrier from all liability in the transportation of said live stock, except as hereinafter agreed, and agrees that such liability shall be only that of a private carrier for hire, and that all liabilty of the carrier shall cease at the station to which such live stock is destined, if its destination be on the carrier's line of railroad, or if destined to a point beyond said carrier's line of railroad, then at said carrier's station, at its terminus, when ready to be delivered to the shipper, consignee, or carrier whose line may constitute a part of the route to destination.

2. The shipper has examined and found in good order and condition the car or cars provided by said carrier for the transportation of said animals, and hereby accepts the same and agrees that they are, as thus provided, suitable and sufficient for said purpose; and said shipper will at his own expense provide such bedding or other suitable appliances in said car or cars as will enable said animals to stand securely on their feet while in the same, and said shipper hereby releases said carrier from all liability for and on account of any and all injury or injuries which the said animals, or any of them, may receive in consequence of any or either of them being vicious, wild, unruly, or weak; and in consequence of any of them being killed, or maimed, bruised, or otherwise injured; and in consequence of heat, suffocation, or other ill effects of being crowded in cars; and in consequence of being injured by the burning of hay, straw, or other material used by the shipper or his agent for feeding or bedding the said animals, or otherwise; and also from all damage or injury or loss which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike, or threatened violence to person or property from any source, and from any injury to track or yards, and from any and all other causes, whether mentioned herein or not, and from the escape of any of said animals, and for loss or damage to said animals from any cause or thing whatever not resulting from the negligence of the agents or servants of said carrier.

3. Said shipper will separate the different kinds of stock in said car or cars by strong partitions, which he will provide at his own expense and risk, and said stock shipped in mixed car-load or car-loads shall be at the entire risk of the shipper on account of any damage that may occur by reason of partitions in said car or cars not being properly made and sufficiently strong to prevent damage to said stock.

4. Said shipper will load and unload said animals at his own risk, and feed, water, and attend the same at his own expense and risk while they are in the stockyards of the carrier awaiting shipment, and while on the cars or at feeding or transfer points, or where they may be unloaded for any purpose.

5. Said shipper will see that said animals are properly placed in the cars furnished, and that the cars are securely and properly fastened so as to prevent the escape of said animals therefrom.

6. The employes of the said carrier shall provide the owner or person in charge of the said animals all proper facilities on trains and at stations for taking care of the same, but the business of the said carrier shall not be delayed by the detention of trains to unload and reload said animals for any cause whatever; but the cars may be left at a station upon the request of the person in charge of the same, and unloaded and reloaded by him to be forwarded by the next freight train if he so directs; and said carrier shall not be held liable for any damage or injury that may occur to said animals during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said animals are kept over at any given point by the said shipper or his agent beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which they may pass while in transit, then this contract shall be held to be voidable, at the option of the said carrier, and in such case such rates of freight may be imposed and collected by said carrier as may be deemed proper, not to exceed local rates from point where received for transportation to such point of detention.

7. In case of accident to or delay of trains, from any cause whatever, the shipper is to feed, water, and take proper care of said animals at his own expense.

8. The shipper or his agent or agents in charge of said animals shall ride on the freight train upon which the said animals are transported.

9. The presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the carrier from all liability on account of wrong delivery, but shall not be held to operate against the rights of the carrier to demand, if it elect, the identification of the party presenting this contract before delivering the said animals to him.

10. Should damage occur for which the said carrier may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed for a stallion or jack $150; for a horse or mule $75; mare and colt together $100; cow and calf together $35; domestic horned animals $30 each; calves, hogs, or sheep $5 each; chickens, ducks and guinea fowl $1.00 per dozen; geese $2.00 per dozen, and turkeys $3.00 per dozen; other animals $5.00 each, which amounts it is agreed are as much as such animals as are herein agreed to be transported are reasonably worth.

11. In case the said carrier shall furnish laborers to assist in loading and unloading said animals, they shall be subject to the orders and deemed employes of said shipper while so assisting.

12. As a condition precedent to the shipper's right to recover any damages for loss or injury to said animals, he will give notice in writing of his claim thereof to the agent of the railroad company or other carrier from whom he receives said animals before said animals are removed from the place of destination above mentioned, or from the place of delivery of the same to said shipper, and before said animals are mingled with other animals.

13. When necessary for said animals to be transported over the line or lines of any other carrier or carriers, to the point of destination, this contract shall, unless otherwise agreed in writing between such other carrier or carriers and the shipper, constitute the contract between the shipper and each of such other carriers respectively for the transportation over so much of its line as said shipment passes over in order to reach destination; and in no event shall one carrier be liable for the transportation of said animals over the line or lines of any other carrier, or liable for the negligence of any other carrier or carriers.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names.

WITNESS: None Present
(To be other than either signer of the contract.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

By Jno. Herbst Agent.

J. J. Brown

1097

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Ky Station

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190

RELEASE.

We, the undersigned, in charge of the live stock mentioned in the within contract, in consideration of the free pass given us by the Louisville & Nashville Railroad Company, hereby agree that said company shall not be liable to us for any injury or damage of any kind suffered by us while in charge of said animals.

J J Brown

With _____ Cars, the numbers of which are noted within.

Nov. 2 190

PASS ON FREIGHT-TRAINS ONLY

J J Brown

Parties in Charge Accompanying Stock.

J. M. Harper Agent.

Only names of parties entitled to pass must be entered above, over the signature of the Agent, who must know that the correct names are entered, and draw a pen through the blank spaces.

It is further agreed that should the L. & N. R. R. Co. at any time during the existence of this contract, reduce the switching charges to the Bourbon Stock Yards Company then the Railway Company will meet the situation and make a corresponding reduction to the Stock Yards Company as far as lies in its power.

7. The Railway Company, desiring to assist in building up the live stock business to and from Louisville, agrees to place no restrictions on the handling of stock to and from the Stock Yards Company; and that it will switch freely, and with all reasonable promptness any and all live stock offered to it for delivery to the Stock Yards Company or to be switched from the Stocks Yards
1096 Company to any connecting lines, even though the same may be coming from or going to a competitive point.

8. This contract is to take effect upon fifteen (15) days' written notice on the part of the Stock Yards Company to the Railway Company, of its readiness and ability to comply with the provisions of this contract, and not later than the first day of October, 1901, and remain in full force and effect for the term of ten years from the said date unless sooner terminated by mutual consent, or by operation of law.

In Testimony Whereof, the parties hereto have caused these presents to be executed in duplicate, by their duly authorized officers, with their corporate seals affixed, on the day and year first above written.

(Here follows facsimile marked p. 1097.)

Louisville & Nashville Railroad Co.'s

CONTRACT

FOR

Transportation of Live Stock

OVER ITS OWN LINES.

Shipper J. J. Brown

From Wyddaura Ky Station

To Louisville Ky Station

No. of Car L & N 19 & 70

No. of Way-Bill 4

Date Nov. 2 190 1

No. of Cars Shipped 1

RELEASE.

We, the undersigned, in charge of the live stock mentioned in the within contract, in consideration of the free pass given us by the Louisville & Nashville Railroad Company, hereby agree that said company shall not be liable to us for any injury or damage of any kind suffered by us while in charge of said animals.

J. J. Brown

J. J. [illegible]

With _____ Cars, the numbers of which are noted within.

Nov. 2 190_

PASS ON FREIGHT-TRAINS ONLY

J. J. Brown

J. J. [illegible]

Parties in Charge Accompanying Stock.

J. M. Herpa Agent.

Only names of parties entitled to pass must be entered above, over the signature of the Agent, who must know that the correct names are entered, and draw a pen through the blank spaces.

It is further agreed that shou
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will meet the situation and ma
Stock Yards Company as far a
7. The Railway Company, d
live stock business to and from
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pany; and that it will switch fr
ness any and all live stock off
Yards Company or to
1096 Company to any connec
be coming from or going
8. This contract is to take
notice on the part of the St
Company, of its readiness and
of this contract, and not later
and remain in full force and
the said date unless sooner te
operation of law.
In Testimony Whereof, the
presents to be executed in d
officers, with their corporate se
above written.

(Here follows fac

1098 The following is a description of Central Stock Yards, showing Pens, Chutes, Scales, Feed Bins, etc.

Building No. 1—Native Cattle Yards.

10 Chutes 40 x 25

53 Pens	40 x 30	Capacity	40 each	2120
17 "	25 x 16	"	20 "	340
				2460

2 Scales; 1 of 81,000 capacity,
1 of 61,000 "
1 Hay Pen 30 x 30.

Building No. 2—Quarantine Cattle Yards.

25 Pens 30 x 40 Capacity 40 each..... 1000
4 Chutes, 1 load cattle each
1 Hay Pen.
1 Scale of 61,000 capacity.
1 Corn Crib.

1099

Building No. 3—Hog Department—(Down Stairs).

50 Pens	30 x 30	Capacity	150 each	7500
8 "	11½ x 15	"	40 "	320
2 "	29 x 8	"	50 "	100
				7920

2 Corn Bins
1 Scale, 61,000 Capacity.

"Exhibit Chas. Byrne No. 1."

1100

Building No. 4—Hog Department—(Down Stairs).

11 Chutes	40 x 25			
17 Pens	30 x 27	Capacity	125 each	2125
25 "	7½ x 10	"	20 "	500
				2625

1 Scale, Capacity 61,000

Building No. 4—Hog Department—(Up-Stairs).

26 Pens	40 x 25	Capacity	150 each	3900
20 "	28½ x 20	"	100 "	2000
				5900

2 Corn Cribs,— 1 Scale 61,000

Total Hog Capacity..... 16445

Building No. 3—Sheep Department.

32	Pens	30 x 30	Capacity	250	each	8000
12	"	25 x 15	"	100	"	1200
20	"	15 x 15	"	60	"	1200
26	"	7½ x 12	"	30	"	780
						11180

1101

20 Assorting Pens 7½ x 18.
2 Scales 61,000 Capacity each.
2 Hay Bins.
4 Inclines.

This building will hold 11,180, or by using the upper floor of Hog Department (Building No. 4) can place 9,000 more, making about 20,000.

1102 R. H. Kirkpatrick. W. H. Jeffries. T. S. Kirkpatrick.
S. T. Kirkpatrick. T. L. Patterson.

Kirkpatrick Bros. & Co., Commission Merchants, for Sale of Cattle, Hogs and Sheep.

Bourbon Stock Yards.

Reference: Southern National Bank.
Long Distance Telephones: { Cumberland Main / ..ome, } 834.

LOUISVILLE, KY., *Feb.* 6, 1903.

"*Special Notice.*"

We desire to announce to the Live Stock shippers and dealers throughout the country that beginning with today our Live Stock Commission business will be conducted at the Bourbon Stock Yards. There are numerous reasons for making this change, a few of which we will detail: The action of the Louisville & Nashville Railroad in the delivery of consignments from Kentucky points is very bad and they will deliver nothing from Tennessee, thereby working a serious hardship and preventing those in that territory from patronizing the Central Yards. Another trouble has been experienced by reason of very bad facilities for conveying the butchers and buyers to and from the Central Yards. These troubles together with other bad arrangements have forced us to this action. We had hoped
1103 that these obstacles would have been remedied some time since, but such is not yet the case. In making this change we want to assure our patrons and friends generally that we believe that it is to their interests; and that we can further assure them that their every interest shall be carefully guarded and protected.

Each member of the firm personally looks after his department, seeing for himself that every consignment is properly fed and watered before being sold, which is an essential feature toward a profit to the shipper at all times. To those shippers who have

patronized us at the Central Yards we feel profoundly grateful and trust that we may continue to serve them in the future and to those for whom we have never made any sales we kindly ask them to give us a trial shipment, as we are especially anxious to get before the entire Live Stock public. We shall give our entire time and attention to the Live Stock Commission business. The salesman in every department being a member of the firm. The shippers can feel with security that his interest will be cared for and handled to the best possible advantage. We feel certain that we know all of our home and foreign buyers as well as any one in this business.
1104 Our greatest aim shall be to deal with our patrons fairly and honestly with the idea in view at all times that when we have made a new customer that we can retain him in the future. We are out for this class of shippers and kindly ask your careful consideration.

The Central Live Stock Journal in which we have been largely interested in putting out before the shippers has been discontinued on account of being rejected by the Post-Office department in going out as second-class matter.

We will try to keep our friends thoroughly posted on any sudden changes in markets by our special postal reports. All inquiries by 'phone, wire or letter will receive our promptest attention.

Thanking you in advance and trusting that we may he honored with a consignment at an early date, we are,

Yours respectfully, KIRKPATRICK BROS. & CO.

"Exhibit Chas. Byrne No. 2."

(Here follow diagrams marked pp. 1105 and 1106.)

I. C. C. No. 993-A.

FORM 218.—[Revised to 9-1-04.]*

Received by the Nashville, Chattanooga & St. Louis Railway

The following described Live Stock, to be transported in accordance with the terms and conditions of the contract entered into below:

CONSIGNEE, DESTINATION, ETC.	DESCRIPTION OF STOCK.	CAR No.
McCampbell Fugg & Burnett	Cattle	24000

Charges $.....

Tariff Rate on this shipment from Nunnelly to Louisville is $ 55 per Car

LIVE STOCK CONTRACT.

Nunnelly Station 2/9 1903

Agreement, made between the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY AND ITS CONNECTING LINES of the first part, and W M Frazier of the second part,

WITNESSETH, that whereas, the said Nashville, Chattanooga & St. Louis Railway and its Connecting Lines as common carriers, transport Live Stock only as per above tariff; now, in consideration that the said party of the first part will transport for the said party of the second part

(25) Hogs (.....head more or less), from Nunnelly to Louisville

[Agents will fill in these blanks the shipping point and station stock leaves N., C. & St. L. R'y.]

Station at the rate of Forty Five Dollars per Car

through from Nunnelly to Louisville

[Agent will fill in these blanks point of shipment and point of destination]

the same being a SPECIAL RATE lower than the tariff rate charged when this contract is not executed, the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire; and it is further distinctly understood by the parties hereto that all liability of said Nashville, Chattanooga & St. Louis Railway, as carrier of said stock, shall cease and terminate at the destination herein stated, if a station upon said railway, if destined to a point beyond said railway, then at its terminus or junction, when ready to be delivered to the owner, consignee or carrier whose line may constitute a part of the route to destination.

2. The party of the second part hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of either or any of them being wild, unruly or weak, and of the escape of any portion of said stock, or by maiming each other or themselves, or in consequence of heat or suffocation, or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw, or other material used by the owner for feeding or bedding the stock, or otherwise; and also all risk of damage or injury or loss whatever, which may be sustained by reason of delay or detention in such transportation, whether occasioned by any mob, strike, or violence, threatened or actual, to person or property from any source, or injury to tracks or yards, or from any and all other causes, whether mentioned or not, or loss or damage from any cause or thing not resulting from the negligence of the agents or employes of said party of the first part.

3. The said party of the second part further agrees that he or his agent will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stockyards of the party of the first part awaiting shipment or delivery, or at feeding or transfer points enroute, or where it may be unloaded for any purposes; and it is agreed that any expense so incurred by the party of the first part, in behalf of the party of the second part, or his agent or assigns, for feeding, watering, loading, unloading, or detention and care of such stock, shall be assessed against such stock and collected from connecting carrier and consignee, upon delivery.

4. It is further agreed that said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. It is further agreed that while employés of the said party of the first part shall provide the owner or person in charge of the stock all proper facilities at station for feeding care of the same, the business of the said party of the first part shall not be delayed by the detention of trains to unload and reload stock for any cause whatever; but cars may be left at a station upon the request of person in charge of the same, and unloaded and reloaded by him, to be forwarded by the next free train if he so directs; and said party of the second part hereby agrees that said party of the first part shall not be held liable for any damage or injury that may occur to said stock during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said stock is kept over at any given point by the said party of the second part, or his agent, beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which it may pass while in transit, then this contract shall be held to be voidable, at the option of the said party of the first part, in which case rates of freight may be imposed and collected by said party of the first part as may be proper, not to exceed local rates to such point of detention.

6. It is further agreed that, in case of accident to or delay of trains from any cause whatever, the owner and shipper is to feed, water and take proper care of stock at his own expense.

7. It is further understood and agreed that the presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the said party of the first part from all liability on account of wrong delivery, but shall not be held to operate against the rights of the said party of the first part to demand, if they elect, the identification of the party presenting this contract before delivering the said stock to him.

8. It is further agreed that, should loss or damage occur, for which the party of the first part may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed the following:

For a stallion or jack,	$150 00.	Calves, sheep or hogs, each,	$5 00.
For a mare and colt,	100 00.	Chickens, ducks or guineas, per dozen,	75.
For a horse or mule,	75 00.	Geese, per dozen,	1 00.
For a cow and calf,	35 00.	Turkeys, per dozen,	1 50.
Cattle, each	30 00.		

Which several amounts, it is agreed, are as much as such animals as herein agreed to be transported are reasonably worth.

9. It is further agreed that, in case the said party of the first part shall furnish laborers to assist in loading and unloading said stock, they shall be subject to the orders and deemed employes of said party of the second part while so assisting.

10. The party of the second part, for the consideration above mentioned, further agrees that, in the event of damage, injury of loss occurring to said stock, for which the party of the first part may be liable, before said stock is removed from the possession or premises of the party of the first part, or is mingled with other stock, he will give notice of his claim, in writing, to the carrier's station freight agent at the point of destination, if for a station on the line of the party of the first part, and to its station freight agent at the terminus or junction point at which it is to be delivered to the connecting carrier, if for a destination beyond the line of the carrier of the first part, and if the stock is unloaded before reaching destination or point of delivery to the connecting carrier, the said party of the second part agrees to give said notice, in manner and form as herein above specified, to the station freight agent at such point of unloading or the nearest agency station thereto; in all of which cases, the said station freight agent shall be given opportunity to inspect said stock.

11. It is further agreed that when necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier or carriers for transportation upon such terms and conditions as the carrier may be willing to accept; provided that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate; but in no event shall one carrier be liable for the negligence of another.

The evidence that the said party of the second part, after a full understanding thereof, assents to all the conditions of the foregoing contract, is his signature thereto.

WITNESS:.....
[TO BE OTHER THAN EITHER SIGNER OF THE CONTRACT.]

T. P. Tidwell
AGENT FOR THE COMPANY.

W M Frazier
OWNER AND SHIPPER.

Corros. Files 1237, 10487, Authority Pro. 28934-A.

1105

"Exhibit Chas. Byrne No 3"

FORM 218.—[Revised to 9-1-04.]* I. C. C. No. 993-A.

Received by the Nashville, Chattanooga & St. Louis Railway

The following described Live Stock, to be transported in accordance with the terms and conditions of the contract entered into below:

CONSIGNEE, DESTINATION, ETC.	DESCRIPTION OF STOCK.	CAR No.
McCampbell Figg & Burnett Charges $	Stock	24000

Tariff Rate on this shipment from Nunnelly to Louisville is $ 45-00 per Car

LIVE STOCK CONTRACT.

Nunnelly Station 2/9 1903

Agreement, made between the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY AND ITS CONNECTING LINES of the first part, and John Hatcher of the second part,

WITNESSETH, that whereas, the said Nashville, Chattanooga & St. Louis Railway and its Connecting Lines as common carriers, transport Live Stock only as per above tariff; now, in consideration that the said party of the first part will transport for the said party of the second part

(175) head more or less, from Nunnelly to Louisville Ky
[Agents will fill in these blanks the shipping point and station stock leaves N., C. & St. L. R'y.]

Station at the rate of Forty Five Dollars per Car

through from Nunnelly to Louisville
[Agent will fill in these blanks point of shipment and point of destination]

the same being a SPECIAL RATE, lower than the tariff rate charged when this contract is not executed, the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire; and it is further distinctly understood by the parties hereto that all liability of said Nashville, Chattanooga & St. Louis Railway, as carrier of said stock, shall cease and terminate at the destination herein stated, if a station upon said railway, if destined to a point beyond said railway, then at its terminus or junction, when ready to be delivered to the owner, consignee or carrier whose line may constitute a part of the route to destination.

2. The party of the second part hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of either or any of them being wild, unruly or weak, and of the escape of any portion of said stock, or by maiming each other or themselves, or in consequence of heat or suffocation, or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw, or other material used by the owner for feeding or bedding the stock, or otherwise; and also all risk of damage or injury or loss whatever, which may be sustained by reason of delay or detention in such transportation, whether occasioned by any mob, strike, or violence, threatened or actual, to person or property from any source, or injury to tracks or yards, or from any and all other causes, whether mentioned or not, or loss or damage from any cause or thing not resulting from the negligence of the agents or employes of said party of the first part.

3. The said party of the second part further agrees that he or his agent will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stockyards of the party of the first part awaiting shipment or delivery, or at feeding or transfer points enroute, or where it may be unloaded for any purposes, and it is agreed that any expense so incurred by the party of the first part, in behalf of the party of the second part, or his agent or assigns, for feeding, watering, loading, unloading, or detention and care of such stock, shall be assessed against such stock and collected from connecting carrier and consignee, upon delivery.

4. It is further agreed that said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. It is further agreed that while employes of the said party of the first part shall provide the owner or person in charge of the stock all proper facilities at stations for taking care of the same, the business of the said party of the first part shall not be delayed by the detention of trains to unload and reload stock for any cause whatever; that cars may be left at a station upon the request of person in charge of the same, and unloaded and reloaded by him, to be forwarded by the next freight train if he so directs; and said party of the second part hereby agrees that said party of the first part shall not be held liable for any damage or injury that may occur to said stock during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said stock is kept over at any given point by the said party of the second part, or his agent, beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which it may pass while in transit, then this contract shall be held to be voidable, at the option of the said party of the first part, in which case rates of freight may be imposed and collected by said party of the first part as may be proper, not to exceed local rates to such point of detention.

6. It is further agreed that, in case of accident to or delay of trains from any cause whatever, the owner and shipper is to feed, water and take proper care of stock at his own expense.

7. It is further understood and agreed that the presentation of this bill of lading shall be sufficient evidence of [illegible] the first part from all liability on account of wrong delivery, but shall not be held to [illegible] the identification of the [illegible]

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LIVE STOCK CONTRACT.

Nunnelly Station 7/9 1903

Agreement, made between the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY AND ITS CONNECTING LINES of the first part, and John Hatcher of the second part,

WITNESSETH, that whereas, the said Nashville, Chattanooga & St. Louis Railway and its Connecting Lines as common carriers, transport Live Stock only as per above tariff; now, in consideration that the said party of the first part will transport for the said party of the second part

(125) head more or less, from Nunnelly to Louisville Ky
[Agents will fill in these blanks the shipping point and station stock leaves N., C. & St. L. R'y.]

Station at the rate of Forty Five Dollars per Car

through from Nunnelly to Louisville
[Agent will fill in these blanks point of shipment and point of destination]

the same being a SPECIAL RATE, lower than the tariff rate charged when this contract is not executed, the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire; and it is further distinctly understood by the parties hereto that all liability of said Nashville, Chattanooga & St. Louis Railway, as carrier of said stock, shall cease and terminate at the destination herein stated, if a station upon said railway, if destined to a point beyond said railway, then at its terminus or junction, when ready to be delivered to the owner, consignee or carrier whose line may constitute a part of the route to destination.

2. The party of the second part hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of either or any of them being wild, unruly or weak, and of the escape of any portion of said stock, or by maiming each other or themselves, or in consequence of heat or suffocation, or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw, or other material used by the owner for feeding or bedding the stock, or otherwise; and also all risk of damage or injury or loss whatever, which may be sustained by reason of delay or detention in such transportation, whether occasioned by any mob, strike, or violence, threatened or actual, to person or property from any source, or injury to tracks or yards, or from any and all other causes, whether mentioned or not, or loss or damage from any cause or thing not resulting from the negligence of the agents or employes of said party of the first part.

3. The said party of the second part further agrees that he or his agent will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stockyards of the party of the first part awaiting shipment or delivery, or at feeding or transfer points enroute, or where it may be unloaded for any purposes, and it is agreed that any expense so incurred by the party of the first part, in behalf of the party of the second part, or his agent or assigns, for feeding, watering, handling, unloading, or detention and care of such stock, shall be assessed against such stock and collected from connecting carrier and consignee, upon delivery.

4. It is further agreed that said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. It is further agreed that while employes of the said party of the first part shall provide the owner or person in charge of the stock all proper facilities at stations for taking care of the same, the business of the said party of the first part shall not be delayed by the detention of trains to unload and reload stock for any cause whatever. The cars may be left at a station upon the request of person in charge of the same, and unloaded and reloaded by him, to be forwarded by the next freight train if by so doing; and said party of the second part hereby agrees that said party of the first part shall not be held liable for any damage or injury that may occur to said stock during the time the same may remain so unloaded and out of the cars as aforesaid; and in case said stock is kept over at any given point by the said party of the second part, or his agent, beyond a reasonable length of time for feeding and watering, subject always to local laws of any state through which it may pass while in transit, then this contract shall be held to be voidable, at the option of the said party of the first part, in which case rates of freight may be imposed and collected by said party of the first part as may be proper, not to exceed local rates to such point of detention.

6. It is further agreed that, in case of accident to or delay of trains from any cause whatever, the owner and shipper is to feed, water and take proper care of stock at his own expense.

7. It is further understood and agreed that the presentation of this bill of lading shall be sufficient evidence of ownership to relieve and release the said party of the first part from all liability on account of wrong delivery, but shall not be held to operate against the rights of the said party of the first part to demand, if they elect, the identification of the party presenting this contract before delivering the said stock to him.

8. It is further agreed that, should loss or damage occur, for which the party of the first part may be liable, the value at the place and date of shipment shall govern the settlement, in which the amount claimed shall not exceed the following:

For a stallion or jack,	$150 00.	Calves, sheep or hogs, each,	$5 00.
For a mare and colt,	100 00.	Chickens, ducks or guineas, per dozen,	75.
For a horse or mule,	75 00.	Geese, per dozen,	1 00.
For a cow and calf,	35 00.	Turkeys, per dozen,	1 50.
Cattle, each	30 00.		

Which several amounts, it is agreed, are as much as such animals as herein agreed to be transported are reasonably worth.

9. It is further agreed that, in case the said party of the first part shall furnish laborers to assist in loading and unloading said stock, they shall be subject to the orders and deemed employes of said party of the second part while so assisting.

10. The party of the second part, for the consideration above mentioned, further agrees that, in the event of damage, injury or loss occurring to said stock, for which the party of the first part may be liable, before said stock is removed from the possession or premises of the party of the first part, or is mingled with other stock, he will give notice of his claim, in writing, to the carrier's station freight agent at the point of destination, if for a station on the line of the party of the first part, and to its station freight agent at the terminus or junction point at which it is to be delivered to the connecting carrier, if for a destination beyond the line of the carrier of the first part, and if the stock is unloaded before reaching destination or point of delivery to the connecting carrier, the said party of the second part agrees to give said notice, in manner and form as herein above specified, to the station freight agent at such point of unloading or the nearest agency station thereto; in all of which cases, the said station freight agent shall be given opportunity to inspect said stock.

11. It is further agreed that when necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier or carriers for transportation upon such terms and conditions as the carrier may be willing to accept; provided that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate: but in no event shall one carrier be liable for the negligence of another.

The evidence that the said party of the second part, after a full understanding thereof, assents to all the conditions of the foregoing contract, is his signature thereto.

WITNESS: .....
[TO BE OTHER THAN EITHER SIGNER OF THE CONTRACT.]

T. D. Tidwell
AGENT FOR THE COMPANY.

John Hatcher
OWNER AND SHIPPER.

Corres. Files 1237, 10487, Authority Pro. 28934-A.

1106

"Exhibit Chas. Bynum No 4"

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1107 Circular No. D–3.

Southern Railway Company in Kentucky (Incorporated).

St. Louis-Louisville Lines.

LOUISVILLE, KY., *October 31st*, 1901.

To agents and connections:

Effective November 1st, 1901, a station will be established at Central Stock Yards, Ky., 9 miles East of Louisville, Ky. Mr. J. H. Ashcraft, Jr., has been appointed as agent.

Connections will please arrange to revise tariffs and division sheets accordingly.

EDWIN FITZGERALD,
Assistant General Freight Agent, Louisville Division.
R. A. CAMPBELL,
Assistant General Freight Agent, St. Louis Division.

"Exhibit Fitzgerald No. 1."

1108 Rate basis No. D–4.
Division basis No. D–5.

Southern Railway Company in Kentucky (Incorporated).

St. Louis-Louisville Lines.

Traffic Department.

Basis
For making and dividing rates
To and from
Central Stock Yards, Ky.,
On
Classes and Commodities.

Totals.

Apply Louisville, Ky., rates to and from all points on Southern Railway, St. Louis-Louisville Lines, also to and from all points on connecting Lines where traffic is handled via Southern Railway, St. Louis-Louisville Lines Junction Points, except Louisville, Ky.

On traffic originating at or destined to points on P. & O. S. W. Ry., C. I. & L. Ry., L. & N. R. R., I. C. R. R. and L. H. & St. L. Ry., delivered to or received from Southern Railway at Louisville, Ky., add One Dollar ($1.00) per car the Louisville rate.

Divisions.

Via Louisville, Ky., allow Southern Railway in Kentucky, $1.00 per car.

Via other Junctions allow Southern Railway, St. Louis-Louisville Lines proportion of Louisville proper rates.

Issued October 31, 1901.

By EDWIN FITZGERALD,
Assistant General Freight Agent, Louisville, Ky.

Effective November 1st, 1901.

R. A. CAMPBELL,
Ass't Gen. Freight Ag't, St. Louis, Mo.

1109 Ex. list: TCP3 EAN5 ETJ8 JJH3 RAC200 RJC3 JDD3. All connections St. Louis-Louisville Lines 3 each. All agents Southern Railway in file 27062-B.

"Exhibit Fitzgerald No. 2."

1110 "EXHIBIT H. B. SPENCER No. 1."

Southern Railway.
Northern Alabama Railway.
Augusta Southern Railroad.

So. Ry. Co. St. L. Lines
July 5, 1902.
Central Stock Yards, Ky.

The American Railway Association Code of Per Diem Rules Governing the Handling of Freight Cars Adopted by These Companies.

Effective July 1, 1902.

1111 To All Superintendents, Train Masters, Train Dispatchers, Yard Masters, Agents, and all others, having to do with the handling of freight cars:

Effective July 1, 1902, the settlement for the use of freight cars belonging to Railroad Companies, will be made on a basis of stipulated amount per day, instead of on a mileage basis, in accordance with the following rules, adopted by the American Railway Association, April 24, 1902.

Definitions.

Home Car.—A car on the road to which it belongs.
Foreign Car.—A car on a road to which it does not belong.
Private Car.—A car having other than railroad ownership.
Home.—A location where a car is in the hands of its owner.

Home Road.—The road which owns a car, or upon which the home of a private car is located.

Home Route.—The line of intermediate roads over which a foreign car was moved from home.

1112 Home Junction.—A junction with the home road.

Home Route Junction.—A junction on the home route.

Switching Service.—The movement of a car at a charge for the service rendered; the road performing such service not participating in the freight rate.

Per Diem Rules.

Governing Settlement for the Use of Freight Cars.

1. The rate for the use of freight cars shall be 20 cents per car per day, which shall be paid for every calendar day. and shall be known as the per diem rate.

2. Days shall be reckoned by subtracting the date of receipt from the date of delivery.

A road which receives and delivers a car on the same day shall not pay the per diem for that day.

3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such

1113 notice, making thirty days in all, thereafter a penalty rate of 80 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.

4. All railroads, including ferry lines, shall be responsible to the car owner for amounts accruing for the use of a car at the established rates, whether such car is in road service or switching service, until the car has been delivered to the owner or to another road.

5. An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the roads directly interested for each local territory.

6. In case a road delivers an empty foreign car without the consent of the owner to a road which does not pay per diem; or if a road permits the loading or reconsigning of a foreign car without the consent of the owner to such a road it shall be responsible

1114 to the owner for the payment of an amount equal to the per diem accruing on the car while on such road.

7. When a car has been de-troyed or so damaged as to require an appraisement under the Master Car Builders' Rules the per diem charge will cease from the date of notice to owner.

8. When a car is detained awaiting the receipt of repair material from its owner, the per diem charge will cease from the date the necessary material is ordered from the owner until the date when it is received by the road holding the car.

9. The Interchange Reports shall close at midnight and shall include all cars exchanged upon the date named unless otherwise noted

thereon. The reports must be sent to the car record office on each day whether cars are exchanged or not.

In cases where there are different standards of time at junction points the earlier time shall be used.

1115 The Interchange Reports to the car record office from junction points must be signed by the agents or other authorized representatives of both roads on the prescribed form, the receipt of cars delivered being thereby acknowledged.* The time of delivery of cars upon interchange tracks of connecting lines shall, *prima facie*, be the time given by the delivering road.

10. The Junction Report for each day will be made to car
1116 owners on the prescribed form as promptly as possible after the receipt of the Interchange Report for that day.

11. Within thirty days after the end of each calendar month car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, showing the number of days each car has been in service upon the road making the report. In computing Per Diem the day of receipt should be disregarded and payment made for day of delivery.

12. The settlement of amounts accruing for the use of cars shall be made monthly without regard to reclaims pending.

13. When reclaims are made for allowances on account of special conditions they must be made by the designated transportation officer of the road which pays the Per Diem to the designated transportation officer of the road from which the allowance is reclaimed.

14. When a road refuses or fails to promptly receive from a connection cars upon which it has laid no embargo, it shall be responsible to the connection for the Per Diem on cars so held
1117 for delivery, including the Per Diem on the home cars of such connection. If such refusal or failure to receive shall continue for more than three days, the delinquent line shall thereafter in addition be responsible for the Per Diem on all cars in transit which are thus held back for delivery. It shall be the duty of a connection intending to reclaim such per Diem allowance to notify the delinquent line daily of the total number of cars so held for it.

15. When a road gives notice to a connection that for any reason it cannot accept cars in any specified traffic, thereby instituting an embargo, it should receive cars already loaded with such traffic at the time such notice is issued. If it does not receive such cars the road holding them may reclaim Per Diem from the road placing the embargo for the number of days such cars are held not exceeding the duration of the embrago.

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*The first two paragraphs of the present Car Service Rule 5 govern the delivery of a car:

5. Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the Interchange track for such deliveries, accompanied or preceded by proper data for forwarding and accepted by the car inspector of the receiving road.

Unless otherwise arranged between the roads concerned the receiving road shall be responsible for the cars and contents after receipt of the proper data for forwarding and until they have been accepted by its inspector or returned to the delivering road.

After the date of the notice a road must not load or reconsign cars in such traffic to the road issuing the notice.

1118 All such notices must be given by telegraph, by the embargoing road, to its immediate connection and by it transmitted as may be necessary.

16. These rules shall not apply to private cars.

17. To interpret these rules and to settle disputes arising under them an Arbitration Committee of five members shall be appointed by the Committee on Car Service. Three members of the Arbitration Committee shall be a quorum.

In case any question or dispute arises under these rules it may be submitted to the Arbitration Committee through the Secretary of the Association in abstract. The abstracts shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decision shall be final. Should one of the parties refuse to furnish the necessary information the Arbitration Committee shall use

1119 its judgment as to whether it can properly decide. All decisions shall be reported to the Association through the Committee on Car Service.

In case a question shall arise not covered by the rules the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

The Committee on Car Service may appoint a secretary for the Arbitration Committee, who shall be paid by the Association. The other expenses of the Arbitration Committee shall be divided equally between each of the parties to the dispute and the Association. The expenses shall be first paid by the Association and then billed to the parties concerned by the Treasurer of the Association.

Particular attention is called to the following instructions:

Rule 1. As these companies are obliged to pay for foreign cars on a Per Diem basis, the necessity for expeditious handling is apparent. Every effort must be made to dispose of foreign cars

1120 promptly and economically; the more promptly they are handled, the more economically it will be. It must be borne in mind that every day's delay will be so much additional expense. A foreign car belonging to a Per Diem road must be given preference in handling in accordance with existing instructions.

Cars must not be accepted from connecting lines unless accompanied by sufficient way-bill reference to make immediate delivery of contents on arrival at destination. (Merchandise cars excepted.)

Cars must not be handled over these Lines, or tendered to connections on card way-bills, unless such card way-bills show all information necessary to accomplish immediate delivery of contents on arrival at destination. (Merchandise cars excepted.)

Cars tendered to these Companies not covered by proper billing, or that are not mechanically acceptable, must not be receipted for. or reported in interchange report as received, until proper

1121 billing is received, or until car has been repaired.

Rule 3. When a foreign car, belonging to a Per Diem road, has been thirty (30) days on these lines, it is subject to a

penalty charge of $1.00 per day. When a foreign car is received from a connection, a home route tag must be applied on each side of the car, showing junction point, road and date received, and must be filled out with ink. This is doubly important under Per Diem, in order that Agents, Yard-Masters and others may be posted as to the length of time a foreign car has been on our rails.

When a foreign car, belonging to a Per Diem road, has been on these lines twenty (20) days or over, Agent or Yardmaster at the point where the car is located, must place thereon a card reading "Penalty Car" provided for that purpose, and dispose of the car in accordance with instructions.

Rule 5. At all junction points where switching service is performed, one road for another, a mutual agreement will be
1122 made between the lines interested, allowing an arbitrary number of days in which to perform the switching; a copy of which agreement will be furnished Agents interested. A permanent record must be kept of this service and a monthly statement rendered within five days after the close of each month, to the Car Accountant, showing initials and numbers of all cars switched for each road; the correctness to be certified to by the Agents of the respective lines. This rule does not apply to Private cars or cars belonging to Non-Per Diem road empty, nor loaded, or reconsigned on these lines to or via a Non-Per Diem road, without authority from the Superintendent Car Service.

In case a system, or foreign car belonging to a Per Diem road, loaded at a station on these lines, reaches a junction point for delivery to a Non-Per Diem road, Agent of these lines will call upon Agent of said road for suitable car, and see that transfer is made.

In the case of live-stock or perishable freight; if transfer
1123 cannot be immediately made, it will be necessary to allow car to go through.

A list of Per Diem roads is appended hereto.

All concerned will be kept advised of roads operating under the Per Diem System.

Private cars and cars belonging to Non-Per Diem roads will be treated the same as at present. Foreign cars received from connecting lines billed through to points on or via Non-Per Diem roads, will be handled in accordance with billing.

Rule 7. When a foreign car belonging to a Per Diem road has been destroyed, or so damaged as to require the appraisement under M. C. B. Rules, the Mechanical Department must give preferred attention and immediately wire the Car Accountant.

Rule 8. When a foreign car belonging to a Per Diem road is held awaiting receipt of repair material from owner, the General Foreman of Car Repairers must immediately advise the Car Accountant
date material was ordered from the owner, and later, the date
1124 the material was received at junction point.

Rule 9. The interchange reports are necessarily the foundation for the entire Per Diem structure, and THEY MUST BE ABSOLUTELY CORRECT. These reports must be made in duplicate and signed by the Agent or authorized representative of the road with

whom cars are interchanged, and copies of report exchanged with each other and retained for reference. A separate sheet will be made for each road, and report rendered daily whether there are any cars interchanged or not. Certified reports to be mailed to Car Accountant on first passenger trains following date of report.

Rule 14. The Superintendent Car Service must be promptly advised by wire of failure of any connection to receive cars on which it has laid no embargo, securing a written notice from such connection of their inability to accept cars. Superintendents will see that a correct record is kept of the car numbers and initials of all cars so held rendering special daily report to Superintendent
1125 Car Service, on Form provided for that purpose. This report must show the length of time each car has been held, and will continue until the cars are accepted, or otherwise disposed of.

Rule 15. When an embargo notice is received from any line by an Officer of these Companies, copy must be sent by him to the Superintendent Car Service. A record must be kept by each Superintendent of initials and numbers of all cars held on account of such embargo, and a complete statement made to the Superintendent Car Service, at the end of the embargo, giving the date the embargo was placed, and date raised, and number of days each car was held, in order that reclaims may be made for Per Diem paid.

List of Railroad Companies Holding Memberships in the American Railway Association on Behalf of which "Per Diem Rules Agreements" have been filed up to this Date.

1126

Atlanta, Knoxville & Northern.
Atchison, Topeka & Santa Fe.
Gulf, Beaumont & Kansas City.
Pecos System.
Southern Kansas Railway of Texas.
Atlantic Coast Line.
Charleston & Western Carolina.
Baltimore & Annapolis Short Line.
Annapolis Washington & Baltimore.
Baltimore & Ohio.
Cleveland, Lorain & Wheeling.
Baltimore & Ohio Southwestern.
Bessemer & Lake Erie.
Blackwell, Enid & Southwestern.
Blackwell, Enid & Texas.
Boston & Albany.
Buffalo Creek.
Buffalo, Rochester & Pittsburg.

1127

Burlington & Missouri River Railroad in Nebraska.
Burlington & Northwestern.
Burlington & Western.

Burlington Cedar Rapids & Northern.
Butte, Anaconda & Pacific.
Cammal & Black Forest.
Canadian Pacific.
Carolina & North-western.
Carrabelle, Tallahassee & Georgia.
Central New England.
Central of Georgia.
Central Railroad of New Jersey.
Central Vermont.
Chattanooga Southern.
Chesapeake & Ohio.
Chicago & Alton.
Chicago & Eastern Illinois.

1128

Chicago, Burlington & Quincy.
Chicago Great Western.
Chicago, Indianapolis & Louisville.
Chicago, Kalamazoo & Saginaw.
Chicago, Peoria & St. Louis.
Chicago, Rock Island & Pacific.
Chicago, Rock Island & Texas.
Choctaw, Oklahoma & Gulf.
Cincinnati & Muskingum & Valley.
Cincinnati, Hamilton & Dayton.
Findlay, Fort Wayne & Western.
Cincinnati Northern.
Cincinnati, Richmond & Muncie.
Cleveland, Akron & Columbus.
Cleveland, Cincinnati, Chicago & St. Louis.
Colorado & Southern.
Columbus, Sandusky & Hocking.
Cornwall & Lebanon.

1129

Cumberland & Pennsylvania.
Cumberland Valley.
Davenport, Rock Island & Northwestern.
Delaware & Hudson.
Delaware, Lackawanna & Western.
Bangor & Portland.
Denver & Rio Grande.
Rio Grande, Pagosa & Northern.
Rio Grande Southern.
Rio Grande Western.
Detroit & Mackinac.
Dry Fork.
Duluth & Iron Range.
East & West.
East Broad Top.
Erie.

1130

Chicago & Erie.
New Jersey & New York.
New York, Susquehanna & Western.
Frisco System.
Fort Worth & Rio Grande.
Kansas City, Memphis & Birmingham.
Red River, Texas & Southern.
St. Louis & San Francisco.
Georgia.
Georgia, Southern & Florida.
Grand Rapids & Indiana.
Grand Trunk.
Cincinnati, Saginaw & Mackinaw.
Detroit, Grand Haven & Milwaukee.
Grand Trunk Western.
Toledo, Saginaw & Muskegon.
Great Northern.

1131

Duluth, Watertown & Pacific.
Eastern Ry. of Minnesota.
Montana Central
Willmar & Sioux Falls.
Greenwich & Johnsonville.
Gulf, Colorado & Santa Fe.
Hannibal & St. Joseph.
Chicago, Burlington & Kansas City.
Kansas City, St. Joseph & Council Bluffs.
St. Louis, Keokuk & Northwestern.
Hocking Valley.
Kanawha & Michigan.
Toledo & Ohio Central.
Houston & Texas Central.
Huntington & Broad Top Mountain.
Illinois Central.

1132

Yazoo & Mississippi Valley.
Illinois Southern
Indianapolis Union
Intercolonial
Prince Edward Island.
Iowa Central.
Jacksonville & St. Louis.
Keokuk Western.
Lake Erie, Alliance & Wheeling.
Lake Shore & Michigan Southern.
Detroit, Toledo & Milwaukee.
Dunkirk, Allegheny Valley & Pittsburg
Fort Wayne, Cincinnati & Louisville
Indiana, Illinois & Iowa

Lake Erie & Western
Northern Ohio

1133

Lehigh & Hudson River.
Lehigh Valley
Long Island
Louisiana & Arkansas
Louisville, Henderson & St. Louis
Louisville & Nashville
Macon, Dublin & Savannah
Macon & Birmingham
Maryland & Pennsylvania
Mexican Central
Mexican International
Michigan Central
Minneapolis & St. Louis
Minneapolis & St. Paul & Sault Ste. Marie
Mississippi River & Bonne Terre.
Missouri, Kansas & Texas
Missouri Pacific
Central Branch

1134

Kansas City North-Western
St. Louis, Iron Mountain & Southern
Mobile & Chio
Nashville, Chattanooga & St. Louis
New York & Ottawa
Ottawa & New York
New York Central & Hudson River
Wallkill Valley
West Shore
New York, Chicago & St. Louis
New York, Ontario & Western
New York, Philadelphia & Norfolk
Norfolk & Southern
Norfolk & Western
North Bend & Kettle Creek
Northern Pacific.
Oregon Short Line.

1135

Parral & Durango
Peoria & Pekin Union
Pennsylvania Railroad System
Northern Central
Philadelphia, Wilmington & Baltimore
West Jersey and Seashore
Pennsylvania Lines West of Pittsburg.
Pennsylvania Company
Pittsburg, Cincinnati, Chicago & St. Louis.

Philadelphia & Reading
Atlantic City
Perkiomen
Philadelphia, Newton & New York
Stony Creek
Pinehurst
Pittsburg & Lake Erie
Pittsburg, Lisbon & Western
Pittsburg, Shawmut & Northern
Plant System.

1136

Queen & Cres-ent
Alabama Great Southern
Cincinnati New Orleans and Texas Pacific
New Orleans & North-Eastern
Alabama & Vicksburg
Vicksburg, Shreveport & Pacific
Quincy, Omaha & Kansas City
Raleigh & Western
Richmond, Fredericksburg & Potomac
Washington Southern
Rio Grande, Sierra Madre & Pacific
Rutland
St. Louis & North Arkansas.
St. Louis, Kansas City & Colorado
St. Louis South Western
San Antonio & Aransas Pass.
San Pedro, Los Angeles & Salt Lake.

1137

Santa Fe Pacific
Grand Canyon
San Francisco & San Joaquin Valley
Southern California
Sunset
Santa Fe, Prescott & Phœnix
Prescott & Eastern
Seaboard Air Line.
Atlantic, Suwannee River & Gulf
Columbus Railroad
Southern.
Augusta Southern
Northern Alabama
South Carolina & Georgia Extension
Southern Indiana
Southern Pacific
Galveston, Harrisburg & San Antonio
Galveston, Houston & Northern.

1138

Gulf, Western Texas & Pacific.
Louisiana & Western
Morgan's Louisiana & Texas
New York, Texas & Mexican
Texas & New Orleans
Staten Island Rapid Transit
Suffolk & Carolina
Terminal R. R. Association, St. Louis
Terra Haute & Indianapolis
Logansport & Toledo
St. Louis, Vandalia & Terra Haute
Terra Haute & Logansport
Terra Haute & Peoria
Texas Central
Texas Midland
Toledo, Peoria & Western
Toledo, St. Louis & Western

1139

Toronto, Hamilton & Buffalo
Union Pacific
Virginia & South-Western
Wabash
Washington and Columbia River
Western Maryland
Western Railway of Alabama
Atlanta & West Point
West Virginia Central & Pittsburg
Wheeling & Lake Erie
Wheeling Terminal
Williamsport & North Branch
Eagles Mere
Wisconsin Central
Wrightsville & Tennille.

1140 List of Railroad Companies Not Members of the American Railway Association on Behalf of which "Per Diem Rules Agreements" Have Been Filed up to This Date.

Atlantic & Birmingham
Aberdeen & Asheboro
Buffalo, Attica & Arcade
Birmingham & Atlantic
Brunswick & Birmingham
Birmingham & Southern
Blue Ridge
Carolina Northern
Central Pennsylvania & Western
Chicago, Rock Island & El Paso
Chicago, Rock Island & Mexico

Cincinnati, Lebanon & Northern
Columbia, Newberry & Laurens
Coahuila & Pacific
Cooperstown & Charlotte Valley

1141

Danville & Western
Dominion Atlantic
East St. Louis & Carondelet
Evansville & Terra Haute
Evansville, Suburban & Newburg
Fort Smith & Western
Frankfort & Cincinnati
Georges Creek & Cumberland
Hawkinsville & Florida Southern
Harriman & Northeastern
Houston, East & West Texas.
Inter-State Car Transfer Co.
Kentucky & Indiana Bridge
Kishacoquillas

1142

Lancaster & Chester
Leavenworth & Topeka
Lexington & Eastern
Little River Valley
Louisville & Atlantic
Mexican Northern
Midland
Nashville & Sparks
Newburg, Dutchess & Connecticut
New River, Holston & Western
Norwood & St. Lawrence
North Western (South Carolina)
Ohio River & Charleston (in Tennessee)
Oregon Railroad & Navigation Co.
Pickens
Paragould South-eastern

1143

Poughkeepsie & Eastern
Randsburg
Sandersville
Saline River
San Pete Valley
Savannah & Statesboro
Sebastacook & Moosehead
Sylvania
Silver Lake
Stewartstown
St. Louis, Troy and Eastern.
Susquehanna & New York

Tallulah Falls
Tellico Railroad
Tennessee Northern
Tifton & North Eastern
Tuskaloosa Belt.
Transylvania Railroad

1144

Waynesburg & Washington
White River Valley.
Wiggins Ferry Co. (St. Louis).
Yreka.

E. E. BETTS,
Supt. Car Service, Southern Railway.

Approved:

C. H. ACKERT,
General Manager, Southern Railway and Northern Alabama R. R.

H. B. SPENCER,
General Manager St. Louis-Louisville Line, Southern Railway.

F. S. GANNON,
General Manager, Augusta Southern R. R.

1145 The Kentucky & Indiana Bridge & R. R. Co.

Comprising: Kentucky & Indiana Bridge, Louisville Belt Line, New Albany & Portland Ferry, Louisville & New Albany Electric Line.

T. H. Hayden, General Yard Master.

LOUISVILLE, KY., *Dec.* 22, 1902.
Y3-547.

Mr. T. Welsh, Foreman, Mr. H. Geary, Foreman, Mr. J. Stigers, Foreman, City.

GENTLEMEN: It has been arranged that stock coming to us from the L. & N. Ry. for the Central Stock Yards will be unloaded promptly on arrival at the Stock Yards. Please see that the empty cars are returned *immediately to the L. & N.* I am advised that they can be unloaded in 10 to 15 minutes and in that case hold
1146 on to the cars and return them.

Yours truly,

J. H. HAYDLE,
Trainmaster.

Copy to G. A. Zumer, G. Y. M. R. F. Nash, N. Y. M.

"Exhibit Welsh No. 1."

-STATEMENT OF-

LOUISVILLE AND NASHVILLE SYSTEM CARS MOVING FROM SEVENTH AND MAGNOLIA INTERCHANGE TO CENTRAL STOCK YARDS. SHOWING TIME RECEIVED, TIME RETURNED, AND TIME MOVED BY THE LOUISVILLE AND NASHVILLE RAILROAD:--

FROM NOVEMBER 1st, 1901. To FEBRUARY 28th, 1903.

PREPARED ACCORDING TO THE RECORDS OF THE KENTUCKY AND INDIANA BRIDGE AND RAILROAD COMPANY.

1147 "Exhibit Bellingtone No 1"

CHARTS

TOO LARGE FOR FILMING

1188 With said record, the appellant filed a statement, which is in words and figures as follows:—

Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Statement.

The judgment appealed from herein was rendered on May 19, 1904, and may be found in the record, in volume 2 thereof, beginning at page 348. The order refusing to suspend the injunction, pending the appeal, was entered May 19, 1904; and may be found in the record, volume 2, at pages 347-356.

No summons or warning order is desired.

HELM, BRUCE & HELM,
Att'ys for Appellant.

1189 Be it remembered that on the 31st day of May, 1904, at a Court of Appeals held at the Capitol at Frankfort the following order was entered, to-wit:

LOUISVILLE AND NASHVILLE RAILROAD CO.
v.
CENTRAL STOCK YARDS CO.

Jeff.

Came appellant by counsel and filed notice, and moves the Court to suspend, pending the appeal herein, so much of the injunction granted by the judgment of the Jefferson Circuit Court, herein appealed from, as is embraced in said notice, and files brief on the motion, and filed statement and moved the Court to set this case for oral argument at the September term, to which motion appellee by counsel object, and is given 5 days time to respond to same, and said motion is submitted.

The Notice and Statement referred to above are as follows:

1190 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Notice.

Counsel for appellee in the above styled case will take notice that on the 31st day of May, 1904, the appellant will move the court to

suspend so much of the injunction granted by the judgment appealed from as is covered by the following terms of said judgment, to-wit:

"And it is further ordered that the defendant, Louisville & Nashville Railroad Company, be, and it is required whenever so requested by the consignor, consignee or owner of said stock at any of its stations, and particularly at its break-up yards in South Louisville, Kentucky, to recognize the right of the said consignor and
1191 consignee or owner to change the destination of said shipment, and upon payment of the full Louisville freight rate, and that the defendant be required to change said destination and make delivery thereof at one of the points of physical connection between its tracks and the tracks of the Southern Railway Company in Kentucky at Louisville for delivery by the said Southern Railway Company to the Central Stock Yards Company at Central Stock Yards, Kentucky, or to any person, firm, partnership or corporation doing business at said Central Stock Yards station, upon the payment of the full Louisville, Kentucky, freight rate, and the presentation and surrender to defendant of the bill of lading or carriage contract for the shipment referred to, by the person shown thereby to have the right to receive from defendant the said shipment, or his agent with the endorsement of the consignee upon the said bill or contract."

And defendant will at the same time move the court to order an oral argument of said case at the next September term of the court.

HELM, BRUCE & HELM,
Att'ys for Appellant.

Notice waived.

DODD & DODD,
For Central Stock Yards Co.

1192 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Defendant.

Statement of Counsel.

I am one of the counsel for the appellant in the above styled case. The questions upon the appeal involve the construction of sections 213 and 214 of the Constitution of Kentucky, as to how far and under what conditions they require an interchange of freight or of cars between railroad companies; and as to whether or not, under such construction as has been placed upon them by the judgment appealed from, they are invalid as attempts to regulate commerce among the several states.

HELM, BRUCE,
Of Counsel for Appellant.

1193 And afterwards on the 15th day of June, A. D. 1904, at a Court of Appeals, the following order was entered to-wit:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jeff.

It is ordered that the mandatory injunction granted herein by the Jefferson Circuit Court against appellant, in so far as its effects interstate shipment of live stock, and traffic—that is, shipments originating in other states, and destined for Louisville, or to stop at Louisville, in route elsewhere, be and the same is hereby suspended during the pendency of this appeal, and until the further orders of this court.

It is also ordered that this case be set down for oral argument at an early date in the next September term of this court.

1194 And afterwards on the 3rd day of November, A. D. 1904, at a Court of Appeals at the Capitol at Frankfort, the following order was entered:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jefferson.

This case coming on for hearing was argued by Helm Bruce for the appellant and J. C. Dodd for the appellee and submitted.

And afterwards on the 4th day of October, A. D. 1904, at a Court of Appeals held at the Capitol at Frankfort, the following order was entered to-wit:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jefferson.

1195 Came the appellant by counsel and filed notice and moved the Court to grant a re-argument of this case, to which motion appellee by counsel objected, and said motion is submitted.

Be it remembered that afterwards at a Court of Appeals held at the Capitol at Frankfort the following Judgment was entered to-wit:

LOUISVILLE AND NASHVILLE RAILROAD Co., Appellant,
v.
CENTRAL STOCK YARDS Co., Appellee.

Appeal from Jefferson Circuit Court, Chancery Branch First Division.

The Court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered certified to said Court (Whole Court sitting. Judge Barker dissenting.)

It is further considered that the appellee recover of the appellant its costs herein expended.

And on said date the following opinion delivered:

1196 Court of Appeals of Kentucky.

Nov. 15, 1906.

(To be reported.)

LOUISVILLE & NASHVILLE RALROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Appeal from Jefferson Circuit Court, Chy. 1st Div.

Opinion of the Court by Judge Settle.

In this action the appellee, Central Stock Yards Company, sought and was granted by the court below a mandatory injunction against appellant, Louisville and Nashville Railroad Company, compelling it to switch and deliver to the Southern Railway Company in Kentucky, at points of connection between the tracks of the two
1197 railroads, in or near the City of Louisville, certain car loads of live stock which had been shipped over appellant's road to appellee, and also requiring appellant in like manner to make future delivery of like freight shipped over its roads and consigned to appellee, or that might be offered it for shipment and delivery to appellee's stock yards.

The plant of appellee, known as the Central Stock Yards, is located upon the line of the Southern Railway in Kentucky, about nine miles from its terminus in the City of Louisville, near and outside the city limits.

The plant is modern and well equipped for appellee's business which is that of feeding, watering, loading, unloading and handling live stock of every description, on commission. The "break up" yards of appellant railroad company are near the intersection

of 4th and G. streets in South Louisville, and not more than 100 yards from appellee stock yards. At the point indicated the tracks of appellant and those of the Southern Railway intersect. At 7th and Magnolia streets about one and one half miles north east of the "break up" yards there is also physical connection by switch between the tracks of the two railroads, and for quite awhile it has been their custom to transfer cars at this place of con-
1198 nection.

It appears that appellant's lines of railroad extend through more of the counties of Kentucky than those of any other railroad operated in the state; that these are the counties in which live stock is principally raised, and that more than 50 percent of all the live stock raised in the state can only reach the stock markets over appellant's line.

It is charged in the petition that appellant has declined to receive, and announced its purpose to continue to reject at any station on its lines, any live stock billed or to be transported, transferred or switched to the Southern Railway Company, or any other connecting carrier at Louisville, for delivery by such railway or carrier to appellee stock yards, and that in keeping with its past conduct and future intentions in this regard appellant has distributed printed circulars throughout the country advising stock shippers and dealers not to ship, and instructing its station agents and employes not to receive, bill, transport, transfer or switch, any live stock at or to any of the points of physical connection between its lines and those of the Southern Railway Company in Kentucky, at Louisville, for
1199 delivery by that company, to appellee or at its yards. That appellant will receive, bill and transport to Louisville live stock tendered it for shipment to appellee, or to any person at its stock yards, but when such stock reaches Louisville it refuses to deliver it to the connecting common carrier, the Southern Railway Company, or to deliver to the latter company the instructions of the consignor, and in all such instances, over the protest of the consignor, makes delivery thereof to the Bourbon Stock Yards Company in Louisville, a rival and competitor in business of appellee whose place of business is at a point several miles from that of appellee.

It is further alleged in the petition that the acts and conduct of appellant complained of were and are violative of the provisions of sections 213 and 214 of the state constitution, and otherwise unlawful, arbitrary and discriminative against appellee and other persons doing business with it; that the injury thereby inflicted was and is of a continuing and irreparable character, not susceptible of actual pecuniary estimation, that resort to actions at law will involve a multiplicity of suits which would not end the litiga-
1200 tion, and that the only available or adequate remedy is that which may be afforded in equity and by injunction.

The answer as amended interposes the following matters of defense: 1st, That appellee cannot maintain the action, though the shipper if injured by the acts complained of in the petition may do so, 2nd, That compliance on appellant's part with the requirements of section 213 and 214 of the constitution, would not only

put it to great inconvenience and delay its traffic, but the switching to be performed would entail unreasonable and extraordinary expense. 3rd, That having established the Bourbon Stock Yards, with its facilities for the handling, feeding and caring for, all live stock shipped to Louisville, it is not required to establish or help to maintain any other live stock depot in Louisville. 4th, That to compel it to recognize the rights of owners, consignors and consignees, to change destination in transitu would be an interference with, or regulation of interstate commerce, and therefore violative
1201 of the Federal Constitution and Interstate Commerce Act. 5th, That its charter forbids any other company or any person to use its road and makes it unlawful for them to do so, and that in accepting the charter it entered into a contract with the state which contract is violated by the provisions of sections 213 and 214 of the Constitution. 6th, That to compel it to perform switching duties in conformity with sections 213 and 214 state constitution and the injunction granted by the court would be to exact of it performance, at less than the cost thereof, of switching duties which can only be required of a transfer company, and this will amount to the taking of its property without due process of law contrary to the provisions of the Constitution, particularly the 14th amendment thereof, 7th, That to compel it to perform switching duties as required by the provisions of the state constitution, *supra*, would necessitate its parting with the possession and control of its cars to another and competing company and in effect thereby deprive it of its property without due process of law.

1202 No reason is perceived for sustaining appellant's contention that this action cannot be maintained by appellee. It will not do to say, as argued by counsel, that only shippers of live stock or commission merchants, injured by the conduct of appellant complained of, may maintain an action against it.

If the alleged arbitrary and discriminatory acts of appellant set forth in the petition have injured appellee's business in the manner and to the extent therein averred, and such acts were violative of the provisions of the state constitution, it goes without saying that it may maintain an action against the wrong doer, without regard to any injury that may have resulted to its patrons from the same acts, or to their right to sue therefor. Moreover, if the alleged wrongful acts of appellant were of daily recurrence and their continuance would cause further and irreparable injury to appellee's business as charged, it made no mistake in applying through a court of equity for the writ of injunction to prevent the wrongs complained of, and at the same time to compel appellant as
1203 a common carrier to perform the duties it owes appellee, and its patrons under and by virtue of the provisions of the Constitution.

Obviously, a separate action for the damages occasioned by each wrong would involve appellee, and appellant as well, in a multiplicity of suits, none of which would necessarily end the litigation. Besides the injury to appellee's business being of a continuing character it is not susceptible of accurate pecuniary estimation.

For these reasons, appellee, in bringing this action availed itself of the only means of obtaining adequate relief.

A court of equity will not interfere by injunction where there is an adequate legal remedy, but where there is no adequate legal remedy, and the ends of justice require it, it will do so to prevent irreparable injury. And by the express provisions of the Civil Code (sections 271-276) the injunction may be preventive, or if necessary it may be mandatory, that is, affirmatively direct the party enjoined to do the thing or act necessary or proper to
1204 be done. Mason &c. *vs.* Byrley 26 R. 487. Interstate Stock Yards Co. *vs.* R. R. Co.'s 99 Fed. Rep. 483; L. & N. R. R. Co. *vs.* P. & K. Coal Co. 111 Ky. 960; Bedford Bowling Green Stone Co. &c. *vs.* Oman &c., 115 Ky. 369. In view of the averments of the petition we conclude that the interest of appellee as consignee and the party injured by the discrimination complained of, is sufficient to entitle it to maintain the action.

Appellee bases its right to the relief asked in this case upon sections 213 and 214 of the State Constitution which read as follows:

Section 213; "All railroads, transfer, belt lines and railway bridge companies organized under the laws of Kentucky, or operating, maintaining or controlling any railroad. transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload, all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, draw-
1205 back or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer, and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said company. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business." Section 214—

"No railway, transfer, belt line, or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association, or corporation for the receipt, transfer, delivery, transportation, handling, care, or custody of any freight, or for the conduct of any business as a common carrier."

Appellant's several contentions and the claim of appellee to relief under these sections, require careful consideration of their provisions. We find that much of the evidence offered by
1206 appellant in support of its second contention is directed to showing that the cost of switching from 7th and Magnolia streets in the City of Louisville to the Bourbon Stock Yards, its live stock depot, is greater per car than the rate charged, for which reason, it insists, it cannot rightfully be subjected to the expense and inconvenience of doing the switching required by section 213, *supra*.

It appears from the evidence that appellant, prior to the erection

of appellee's plant, in regulating its switching charges, as to connecting carriers, had fixed the same at three dollars per car, from all points of physical connection between such other carriers and its own road to the Bourbon Stock Yards. Later the charge was reduced to $2.00 per car and after the erection of appellee's yards to $1.00 per car.

It also appears that the switching here referred to is done from what are known as the "break up" yards of the railroad, each railroad entering Louisville having its break up yards at a terminal point. Here the road engine by which a freight train of numerous cars is brought in, is uncoupled from the train and the train
1207 is "broken up" or separated with switch engines, which are use to carry the cars to some connecting line, industry, or other place to which they are consigned, within the switching limits of the terminal point. It further appears that appellant has its "break up" yards in South Louisville, one and a half miles distant from 7th and Magnolia streets, at which point there is physical connection between the tracks of appellant and those of the Southern Railway Company where many cars are daily interchanged by the two systems for further transportation, or for delivery to different industries within the terminal switching limits of one or the other of the roads.

In ruling upon the second contention of appellant, the chancellor held that this was purely a switching case under section 213 of the Constitution, which imperatively requires all common carriers to make freight deliveries at Louisville and other terminal points, to one and all alike without discrimination, therefore, the question of whether such service could be conveniently performed by appellant or that of regulating, or fixing its switching charges was not
1208 involved, though as to the latter, it was further held that inasmuch as appellant had voluntarily fixed the charge for such service it could not reasonably complain that it was not remunerative.

We are now to determine whether these conclusions of the lower court are correct. What is the object of sections 213 and 214 of the Constitution? Judging from what was said upon this question in the debates of the constitutional convention (vol. 4 pages 5118 to 5162 inclusive), it is manifest that these sections were specifically designed to cover just such a state of case as is here presented. This we think apparent from the references made in debate by members of the convention to previous refusals of appellant railroad company to receive, bill, transfer, or to deliver live stock to the Kentucky and Indiana Stock Yards Company, an industry similar to that of appellee, which was then located on the Kentucky and Indiana company's tracks in the City of Louisville. In the progress of the debate, it seemed to be conceded that under common law principles, or section 3 of the Interstate Commerce Act,
1209 some of the Federal Courts had held that a railroad company had the right to make exclusive contracts for live stock deliveries as claimed by appellant, but the fact that it had been so held was urged as a reason why the convention should adopt sections

213 and 214, and thereby put into the Constitution in express terms such a provision as would prevent common carriers from discriminating against any consignee at a terminal point.

The last clause of section 213, though taken from the Interstate Commerce Act, differs from it in one essential particular. The third section of the Interstate Commerce Act, concludes with this language: "But this shall not be construed as requiring any such common carrier to give the use of its tracks or *terminal facilities* to another carrier in like business." The last clause of section 213, state Constitution, is as follows: "But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

It will at once be discovered that the words "or terminal
1210 facilities" appearing in the act, are omitted from section 213 of the Constitution. This omission, as the proceedings of the convention indicate, was designedly made and the section as a whole intended to make imperative the duties therein required of common carriers, regardless of the previous decisions of the courts. That is to say. in adopting the section, *supra*, it was the manifest purpose of the framers of the present Constitution to make it compulsory upon every common carrier to use its terminal facilities in receiving, delivering, interchanging, transferring and transporting freight in car loads, or less quantities, at points of physical connection for all alike when so requested.

If the state has the power to impose reasonable regulations for the government of railroads and other common carriers doing business within its borders, and one of the reasonable requirements of its organic law as to the former is that they shall use their terminal facilities for the benefit of the public to transfer, transport,
1211 switch and deliver freight to all alike, it necessarily follows that if they wrongfully refuse to perform these duties, they may, upon a proper showing of their recalcitrancy be compelled by the courts to do so.

As said by this court in Comwlth. *vs.* L. & N. R. R. Co. 26 R. 597: "Railroads are creatures of the law, invested with certain powers to promote the public interest, for which reason they may be required to conduct their affairs in furtherance of the public objects of their creation, and it is because of this public character that courts assume jurisdiction to enforce the public duties required of them."

The following more elaborate statement of the same doctrine will be found in Gladson *vs.* State of Minnesota, 166 U. S., 435, which is quoted with approval in the opinion of the case, *supra*. "A railroad corporation created by a state is for all purposes of local self government a domestic concern even when its road connects, as most railroads do, with railroads in other states, and the state which created the corporation may make all needful regulations of a
1212 police character for the government of the corporation while operating its road in that jurisdiction. It may prescribe the location of the place of construction of the road, the rate of speed at which trains shall run, and the places at which they shall stop, and make any other reasonable regulation for their management in

order to secure the objects of the corporation, and the safety, good order, convenience and comfort of the passengers, and of the public. All such regulations are strictly within the police power of the state" * * * (Lake S. & M. S. Ry. Co. *vs.* Ohio, 173 U. S. 285).

Appellant's refusal to obey the mandatory provisions of the constitution contained in section 213, cannot be excused upon the ground that to observe them would subject it to inconvenience or increased expense.

In Comwlth. *vs.* L. & N. R. R. Co. *supra,* the railroad commissioners were sustained by this court in a ruling requiring the railroad company to so operate its trains as to accommodate local travel between Shelbyville and Christiansburg. It was contended
1213 by the company that obedience to the order of the railroad commissioners would compel it to violate a contract it had made with the Chesapeake and Ohio Railroad, whereby it had leased to that company for a term of years the exclusive control and occupancy of its road between the points named for the use of its through passenger trains only, and further that if itself compelled to operate trains on that part of its road it would be subjected thereby to great pecuniary loss. In response to these contentions, and in concluding its reasons for rejecting them, the court, in part, said: "But in any event appellee cannot be permitted to escape the performance of any duty or obligation imposed by its charter or the general laws of the State, by transferring its road or any part thereof, to a lessee, or upon the ground that its own operation thereof will occasion loss to it."

In C. & N. W. R. R. Co. *vs.* The People, 56 Ill., 376, the railroad company attempted to excuse its refusal to make a delivery of grain at the plaintiff's elevator upon the ground of additional ex-
1214 pense. In considering this defense the Supreme Court of Ill. said: * * * "The only allegations made in the return for the purpose of showing any difficulty in delivering to relator's elevator, the grain consigned thereto, from the Wisconsin and Milwaukee divisions, is, that those divisions connect with the line on west water street only by a single track, and that respondent cannot deliver bulk grain or other freight to the elevator of relator's, even from those divisions, without large additional expense, caused by the loss of the use of motive power, labor of servants and loss of the use of cars, while the same are being delivered and unloaded at said elevator and brought back. As a reason for non-delivery on the ground of difficulty, this is simply frivolous."

It is not insisted by appellee that appellant should deliver at its stock yards live stock carried to Louisville on its lines and consigned to appellees by the shippers, but only that it be required to deliver cars containing such stock at points of physical connection between its tracks and those of the Southern Railway Company in or
1215 near Louisville, in order that the latter company may deliver them to appellee at its stock yards which are approached and surrounded by its tracks and switches.

Consideration of appellant's third contention is unnecessary. It may be conceded that having established the Bourbon Stock Yards as a place for receiving and caring for live stock, it cannot be required to furnish more than one live stock depot in the City of Louisville, but we do not think that question is involved in this case, for appellee does not rest its claim to relief on any right conferred by the common law, but upon the mandatory provisions of the constitution, which leads us to consider whether this case belongs to the class designated "Stock yard cases proper" in the written opinion of the chancellor, or to the other class referred to therein as cases "involving interchange of cars at physical connection of railways." The rule he deduces from the authorities as to the first class is: "That where the carrier furnishes its own stock yards, either by building them itself or adopting the yards of another, it cannot be compelled under the common law, or the Interstate Com-
1216 merce Act, to furnish any other stock yard, or appliances therefor for loading or unloading live stock at any other point in the city upon its own lines than at its own yards."

As to the second class, or cases involving interchange of cars at points of physical connection between railroads, the opinion of the chancellor states the rule thus: "Where ample facilities for loading and unloading are furnished by another line, and yards are there erected on the other carrier's track so that the carrier may deliver stock with equal safety at said yards, then such delivery may be required, certainly under our constitution if not at common law. If this latter proposition is put in doubt by some conflict of authority, under the common law, it is certain that wherever there is statutory or constitutional enactment looking to a prohibition of any discrimination in regard to the delivering, handling, care and custody of freight, there can be no such discrimination, and similar treatment may be demanded by all in the same business."

1217 We think the rule last stated applicable to the case at bar, though counsel for appellant contend that it is not and cite the following authorities which, it is insisted, support their view. Central Stock Yards Co. *vs.* L. & N. R. R. Co., 192 U. S., 568; Covington Stock Yards Co. *vs.* Keith, 139 U. S., 128; Butchers and Drovers Stock Yards Co. *vs.* L. & N. R. R. Co., 67 Fed. Rep., 35.

These, as we will presently endeavor to show, were purely stock yard cases, decided upon supposed common law principles without respect to section 213 state constitution, for which reason we do not accept them as authority in point.

It is, however, earnestly argued by counsel for appellant that the case of Central Stock Yards Co. *vs.* L. & N. R. R. Co., *supra,* is an adjudication directly in point, but this claim does not appear to be conclusive as the following excerpts from the opinion of the supreme court in that case will show:

"We also lay on one side the question whether the section of the Constitution of Kentucky, is or is not invalid as an attempt to regulate commerce among the states. For we are of opinion that the defendant's conduct is not within the prohibition or require-
1218 ment of either the act of Congress or the constitution of Kentucky as those provisions fairly should be construed * * *.

We have discussed the case as if the two stock yards were side by side. They were not, but they were both points of delivery for cattle, having Louisville for their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which a carriage to another station in the same city by another road fairly might be regarded as a *bona fide* further transportation over a connecting road and within the requirements of the Kentucky Constitution. However, that may be we are of opinion that the court below was entirely right, so far as it appears, in treating this as an ordinary case, of stations at substantially the same point of delivery, and therefore as one to be dealt with as if they were side by side." It is patent the Supreme Court expressly declined to apply either the Constitution of Kentucky, or the Interstate Commerce Act, to the case before it, and in so holding incidentally declared the defendant's conduct was not within the prohibition or requirements of either the state constitution or the act of congress, though ad-
1219 mitting in a subsequent paragraph of the opinion that a case might arise in which carriage to another station in the same city by another road, might be regarded as a *bona fide* further transportation over a connecting road and within the requirements of the Kentucky Constitution.

We do not think the opinion, *supra,* is to be understood as limiting the duty of a common carrier under section 213 to that of only receiving cars of other roads coming to such common carrier, for the court did not construe or apply the section and we will not presume that it intended an interpretation not justified by the language of the section. The wording of the section with respect to all common carriers is that they "shall so receive, deliver, transfer and transport all freight as above set forth from and to any point where there is physical connection with the tracks of said companies." Nor do we think the language, "shall receive, transfer, deliver and switch, empty or loaded cars," appearing in this section means that a common carrier shall be required to transfer, and deliver to other carriers
1220 only such cars as it may receive of such other carriers. Such a narrow construction would allow each railroad company to say that it would not part with its own cars, consequently there would be no cars to receive.

The cases of Butchers and Drovers Stock Yards Co. *vs.* L. & N. R. R. Co., 67 Fed. Rep., 36, and Covington Stock Yards Co. *vs.* Keith, 139 U. S., 128, relied on in this connection by appellant's counsel throw little light upon the questions here involved. The first was, as stated in the opinion, an action * * * "To compel it (The L. & N. R. R. Co.,) to build a spur track connecting with complainant's yards," consequently it presents no question involved in the case at bar.

The other only holds that a carrier having established its own stock yards, cannot be required under the common law to furnish another for loading or unloading stock at any other point in the city.

In point of fact it differs from the case at bar in this, Keith
1221 was the proprietor of stock yard in the City of Covington, provided with all the necessary means of receiving, feeding and

caring for such stock as he purchased or as might be consigned to him by others for sale." His business therefore, was that of "buying and selling on commission as well as on his own account, live stock, brought to and shipped from Covington over the Kentucky Central Railroad." He was maintaining his own private stock yards for his own use. Whereas in the case at bar, appellee maintains public yards, its position with reference to its patrons and the public being that of a public warehouseman, ready to serve all alike and care for all the stock that may come. Appellee does not buy and sell stock, but only yards and cares for it. Appellant may, under ordinary circumstances, have the right to compel a private individual to accept a delivery of live stock at its own yards, but we do not think it has the right to enter into a preferential contract with one public stock yards which obligates it to make of such stock yards a monopoly, and by that means destroy or cripple another public stock yards
1222 equally well equipped for handling and caring for live stock and having an equal right to require the delivery of live stock by appellant to it.

It is also contended for appellant that this court in L. & N. R. R. Co. *vs.* Comlth. 108 Ky. 628, construed the constitutional provision involved in this case as in harmony with Butchers and Drovers Stock Yards Co. *vs.* L. & N. R. R. Co., and Covington Stock Yards Co. *vs.* Keith, *supra,* We think counsel err in this conclusion, for in L. & N. R. R. Co. *vs.* Comlth., the controversy as to rate discrimination which necessitated a construction of section 215 of the constitution, in connection with section 214 and others of the same instrument, the former being the section under which the railroad company was indicted. The point decided in that case was that the rigid inhibition as to preferential exclusive contracts contained in section 214 was modified by the qualifying phrase "upon the same conditions" found in section 215. No such question is here involved.

We think the further contention of appellant that the Bour-
1223 bon Stock Yards and those of appellee should be treated as if they were side by side, untenable, because as a matter of fact they are not side by side. The proof shows by actual measurement that the distance from the Bourbon Stock Yards to that of appellee by the route over which live stock must pass, is about eight miles, or to be more specific, the distance from appellee's yards to 7th and Magnolia street is two and one tenth miles; from the latter point to South Louisville is one and 71 one hundredths miles; from South Louisville to the switch at east Louisville, from which point stock is carried to the Bourbon stock yards, is three and 94 one hundredths miles and from the switch at South Louisville to the railroad pens of the Bourbon stock yards, the distance is from 800 to 900 feet. The addition of these distances will make the full distance between the two stock yards about eight miles. We think, therefore, that it would not do violence to the rights of the parties litigant, to assume that these yards are not side by the side and should not in our opinion be so regarded. Moreover, it would seem not unreasonable to say

that the moving of freight within the territory of a populous
1224 city like Louisville proximately, if not actually, a distance of eight miles, is further transportation even in the meaning of the statement quoted above from the opinion of the Supreme Court in Central Stock Yards Co. *vs.* L. & N. R. R. Co., *supra*. At any rate it should be so regarded, unless we are to conclude that further transportation can only mean transportation to another city, or some point of delivery other than that to which the freight is consigned, which we are not prepared to concede.

In our opinion, not only had the Constitutional Convention the power to impose regulations upon all railroads within the state requiring interchange of cars and switching at points of physical connection in receiving and delivering freight, and the the use of their terminals for such service, as manifestly contemplated by section 213, but under the general police power of the state performance of such duties may be compelled by legislative enactment alone.

This doctrine is recognized in L. & N. R. R. Co. *vs.* Pitts-
1225 burg and Kanawha Coal Co. 111 Ky. 960, wherein it is said: "As incidental to the operation of a railroad it has the power to interchange cars with a connecting carrier and such is the ordinary and usual way of doing business between common carriers, and the overwhelming weight of authority is to the effect that common carriers may by constitutional requirement, or legislative enactment, be compelled to interchange cars the one with the other for delivery on the line of the one or the other to the named consignee."

In L. & N. R. R. Co. *vs.* Williams, 95 Ky. 199, it was held that although section 213 of the Constitution required railroad companies to receive by transportation cars belonging to other companies, still if such cars are so constructed as to render it unsafe to handle them in the ordinary mode, it is the duty of the company to refuse to receive them. Conversely expressed, the necessary meaning of the above judicial conclusion is that if a car offered to the connecting carrier is not unsafe, the latter is by the provisions of the section, *supra*, compelled to receive it.

In Burlington C. R. & N. R. R. Co. *vs.* Dey, 82 Iowa 336,
1226 (12 L. R. A. 436) the supreme court of that state in upholding the constitutionality of a statute, containing provisions similar to those of section 213 Kentucky Constitution, said: "The fact that the transfer of cars of one company to another for the transportation of property over more than one railroad without breaking bulk has been practiced so long as to be recognized as of the usual course of business, of which we will take judicial notice (Peoris *vs.* P. N. Ry. Co. *vs.* Chicago R. I. & P. P. Co. 109 Ill., 139) is a complete answer to the complaints made in the objection under consideration. Surely a course of business so long pursued and so extensively prevailing and demanded by the commerce of the county cannot when recognized and required by statute, become so objectionable in principle so oppressive in operation as to require the statute to be declared unconstitutional.

The railroad company as a common carrier is required to receive

and transport freight offered it for transportation. The rea-
1227 sons upon which this rule is founded impose upon it the obli-
gation to have cars of other companies brought to it for transportation over its own road. As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing the duty thus imposed cannot be regarded as interfering with the constitutional guaranties for the protection of the rights and property of such companies.

Railroad corporations are quasi public corporations dedicated to the public use. In accepting their charters they necessarily accept them with all the duties and liabilities imposed upon them by law. Thus a quasi public trust is created which clothes the public with an interest in the use of railroads, which can be controlled by the public to the extent of the interest conferred therein."

In Jacobson *vs.* Wisconsin Minn. and P. R. R. Co. 71 Minn. 532
(40 L. R. A. 392), the supreme court of Minnesota, having
1228 under consideration a statute substantially like section 213
of our constitution said of its constitutionality: "We are clearly of the opinion that the legislature has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars as incidental to the business for which the company was chartered."

In Michigan C. R. R. Co. *vs.* Smithson, 45 Mich. 221, Judge Cooley said of a like statute: "The necessities of commerce required this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the state to punish could hardly fail to be speedy and effectual." In McCoy *vs.* C. I. St. L. & C. R. R. Co. 13 Fed. Rep. 3, we find this statement of the same doctrine: "A railroad company cannot bind itself to deliver to a particular stock yard all live stock coming over its line to a certain point, but it is bound to transport over its road and deliver at such points reached by its tracks or connections all live stock consigned, or which
the shipper desires to consign to them, upon the same terms,
1229 and in the same manner as under like conditions it transports and delivers to their competitors; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yards discriminated against."

In Coe *vs.* L. & N. R. R. Co., 3 Fed. Repr. 778, it is said:

"The facts suggest that very important inquiry how far railroads called into being to subserve the public can be lawfully manipulated by those who control them to advance incidentally their own private interests or depress the business of particular individuals or localities for the benefit of other persons or communities. As common carriers they are by law bound to receive, transport and deliver freight offered for that purpose in accordance with the usual course of business. The delivery when practicable must be to the consignee."

In Peoria & P. U. R. R. Co. *vs.* C. R. J. & P. R. Co., 109 Ill. 135,

the doctrine is also recognized in the following words of ap-
1230 proval:

"It is a matter of so much public concern that judicial notice may be taken of the fact that cars belonging to different companies are interchangeably used on all the railroads in the United States, and that no company could do any considerable freighting business that did not conform to this general usage. Without such usage it would be difficult, if indeed, it would be *im*possible to transact the commercial business of the country."

An examination of the following additional authorities will show that they are in accord with those from which we have so liberally quoted: Interstate Stock Yards Co. *vs.* R. R. Cos. 99 Fed. Rep. 472; L. & E. & St. L. Consol. Ry. Co. *vs.* Wilson 18 L. R. A. 105; R. R. Co. *vs.* Goodridge, 149 U. S. 680; Inman *vs.* St. L. S. W. Ry. Co. 37 S. W. 37; B. C. & N. R. Co. *vs.* Dey, 82 Iowa, 443; Atchison, T. & S. F. R. R. Co. *vs.* Denver & N. O. R. Co. 110 U. S. 667; State *vs.* Wabash St. L. & P. R. Co. 83 Mo. 144;

1231 In view of the foregoing authorities we think it free from doubt that a common carrier may be required to make transfer of freight to the connecting carrier without breaking bulk, and that such is the customary way of transferring live stock from the initial carrier to the connecting carrier is abundantly shown by the evidence appearing in the record.

This custom among common carriers is not only reasonable, and as applied to the transportation of live stick manifestly humane, but it is indispensably necessary to the demands of commerce.

Live stock or what is called perishable freight, damage quickly from travel, rehandling and delay, and this well known fact gave birth, doubtless, to the custom of transferring such freight by interchange of cars where it is transported over more than one road, delivery being made by the first carrier at the end of its line to the connecting carrier. But leaving out of view any question of appellant's duty under the common law, we have certain plain, unambiguous provisions of the state constitution requiring of it
1232 the delivery, through another carrier at Louisville, with whose road it has physical connection, live stock consigned to appellee, and if it be conceded that the constitution is indefinite or even silent as to the precise manner in which such delivery shall be made, we find that as a matter of custom the usual and proper way to make such delivery is by the interchange of cars, and that this custom is observed by appellant with respect to other railroads, except in the matter of delivering through the Southern Railway to appellee live stock consigned to it over appellant's lines of road. In other words where live stock is consigned to appellee over appellant's road, it arbitrarily refuses to deliver it, except at the Bourbon Stock Yards where it is unloaded from the cars, and to be taken from that point to appellee's yards, it must be reloaded on the cars and carried a distance of about eight miles, or driven on foot through the streets of Louisville, a distance of four miles, either reloading
1233 or driving them through the city, would cause injury to the stock by shrinkage and consequent loss to the shipper. This

it seems to us, is a wrong both to appellee and its patrons and if persisted in by appellant would destroy appellee's business.

The duty imposed by the provisions of the Constitution upon appellant to make delivery of live stock as demanded by appellee, is not in our opinion affected by the fact that its performance will involve on appellant's part, or that of the connecting carrier, what are technically known as switching movements, for as said in **Missouri Pacific Ry. Co. *vs.* Wichita Wholesale Grocery Company**, 40 Pacific 899, "The distance over which freight is hauled, whether in car loads or less quantities, whether in its own cars, or that belonging to connecting carriers, can make no difference with the capacity in which the company acts. A railroad transporting a passenger or car load of freight one mile, using a switch engine for motive power, is just as much a common carrier as if the distance were a
1234 thousand miles by regular freight or passenger train." Manifestly it is the duty of appellant as a common carrier to accept and carry all freight tendered it, and to make delivery thereof to the consignee, if the point of destination is on its lines, but if destined to a point not on its lines, it must nevertheless accept and carry such freight to the end of its lines and there deliver it to the connecting carrier with the instructions of the shipper.

In Elliott on Railroads the common law duty of a common carrier is thus stated: "As a general rule no carrier is bound by law to accept and carry goods beyond the terminus of its own line. In the absence of any agreement, either express or clearly implied for transportation beyond its own line, the common law duty of an independent carrier is performed by safely transporting the goods over its own line and delivering them to the consignee or connecting carrier, as the case may be. In such a case the goods are to be delivered by the initial carrier to the connecting carrier for further transportation; the former is considered as a forwarding
1235 agent rather than a carrier, as to such further transportation, and is not liable for the default of subsequent carriers. Its whole duty is not always performed, however, by merely tendering the goods to the connecting carrier. If the latter refuses to receive them, it is generally the duty of the initial carrier to notify the consignor or the consignee without unreasonable delay, and to store or otherwise take care of the goods for a reasonable time while awaiting instructions. * * * So where instructions are to be given to it with the goods to be transmitted to succeeding carriers, it is the duty of such initial carrier to duly transmit them to the connecting carrier." Elliott on Railroads vol. 4 sec. 1432.

"It is in general the duty of the initial carrier to obey the instructions of the shipper as to the route, mode of carriage and the like, and it should also transmit the instructions of the shipper to the connecting carrier". Elliott on Railroads vol. 4, sec. 1440.
1236 P. R. R. Co. *vs.* Jones 155 U. S. 333; Daner *vs.* N. Y. &c. R. R. Co. 50 Howard, 428; Little Miami R. R. Co. *vs.* Washburn 22 Ohio, 330; Parker *vs.* C. S. B. Q. R. R. Co. &c. 56 Conn. 137; Bosworth *vs.* Chicago Ry. Co. 37 Fed. Rep. 72; R. R. Co. *vs.* Mfgt. Co. 16 Wallace 318; Vincent *vs.* C. & A. R. R. Co. 49 Ill. 41;

Coe *vs.* L. & N. R. R. Co. 3 Fed. Rep. 778; *In Re* Patterson Fed. Rep. 3, 89; North *vs.* Transportation Co. 146 Mass. 315; M. S. & I. R. R. Co. *vs.* Day, 20 Ill., 375; Beers *vs.* Wabash St. L. & P. R. R. Co. 34 Fed. Rep. 244; L. & N. R. R. Co. *vs.* Odell, 33 S. W. 611; McCoy *vs.* C. & I. St. L. & C. 13 Fed. Rep. 3.

The right of the shipper to have his goods delivered to a connecting line is involved in the right to consign them as he chooses, and while he cannot require the initial carrier, at common law to assume any obligation beyond its own lines he can compel it to carry to the end of his line and deliver, according to the usual course. And we also think that a common carrier is as much bound to carry for another common carrier as it is to carry for other persons. Season-

good &c. Co. *vs.* Tenn. and Ohio River Transportation Co. 21
1237 L. L. 1144. Appellant cannot justify the acts complained of upon the ground that they were required by its contract with the Bourbon Stock Yards which would have been violated had it complied with appellee's demands as to the delivery of live stock to it. The contract in question was entered into by the parties prior to the assembling of the Constitutional convention. It provides in specific terms for the establishment and proper maintenance of the Bourbon Stock Yards as alleged in the answer and the 4th clause thereof reads as follows:

"First party agrees that it will not lease, rent or sell any of its ground, in the City of Louisville, for the establishment of a stock Yard, or otherwise facilitate the establishment of a stock yard in said city, and it will establish no other stock depot in said city, and that it will deliver and cause to be delivered to the second party, so far as

it legally may all live stock shipped over the roads of the
1238 first party and consigned to the City of Louisville, and should any live stock be shipped to other person or persons of the said city the first party hereby makes and agrees to make the stock yards of the second party the stock depot of the second party for said city and agrees to unload all live stock shipped to said city at the address of the second party, but if the provisions of this section of the contract be abrogated or invalidated by judgment of any court or by legislative requirement then the second party shall have no claim to damages arising out of or dependent on said provisions, and the second party shall, at its own costs and expense defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom."

Three things are apparent from the language of this clause of the contract viz: That the parties at the time of its execution were themselves in doubt as to its validity; that appellant can sustain no loss,

either by way of cost incurred in litigation arising from it,
1239 or in the matter of damages to be paid the Bourbon Stock Yards in the event the contract should be abrogated by the judgment of a court or by legislative requirement, and finally that the parties had in contemplation some early change in the laws of the state, organic or statutory, that might require the abrogation of this contract.

That this is an exclusive and preferential contract such as is ex-

pressly forbidden by section 214 of the State Constitution, there can be no doubt, and likewise such as the courts everywhere have denounced as against public policy, because promotive of monopoly and hurtful to the public, as well as the person or persons sustaining special injury therefrom.

A similar contract was recently condemned by this court in the case of Bedford-Bowling Green Stone Co. &c. *vs.* Oman &c. 115 Ky. 369. One of the points of controversy was whether the Louisville and Nashville Railroad Company should be required to transport on its cars stone from appellee's quarry, which it had refused to do on the ground that by contract with the Bedford-Bowling Green Stone Co., a competitor of appellees and owner of a quarry side by side with theirs, it had obligated itself to use the
1240 switch connecting both quarries with the main track three miles distant, only for the transportation of stone from the Bedford-Bowling Green Stone Company's quarry, the latter company having purchased the switch with the quarry property from its grantor. In disposing of this contention of the railroad company the court through Judge Barker said:

"This contract and other evidence in the record bearing upon the question show that the Louisville and Nashville Railroad Company during the continuance of this last contract has the control and management of the railroad switch. It owns, controls and operates the engines and other rolling stock which pass over the line. It keeps the railroad in repair and owns all the material which goes into it. So far as this record shows it exercises the same control and dominion over this line that it does over any other part of its system, and we think by the terms of the contract in question the switch, during the continuance of the contract, at least, became a part
1241 of the general system of the Louisville and Nashville Railroad Company. This being so it cannot lawfully refuse to receive and transport freight belonging to appellee to and from such reasonable points along the line at which they may lawfully ship or receive it. This was clearly settled by the opinion of this court in the case of the Louisville and Nashville Railroad Company *vs.* Pittsburg and Kanawha Coal Co. 111 Ky. 960 in which it is said: "Railroad Companies are quasi public corporations, created for the purpose of exercising the functions and performing the duties of common carriers. These duties are defined by law, and *it* accepting their charters they necessarily take with them all the duties and liabilities annexed; and they are required to supply to the extent of their resources adequate facilities for the transportation of all business offered and to deal fairly and impartially with their patrons. (McCoy *vs.* C. & I. St. L. C. R. R. Co. 13 Fed. Rep. 5; Maine *vs.* Ill. 94 U. S. 136.) And they have no right to contract with a corporation or individual to give exclusive rights to transfer any com-
1242 modity over any part of their line." * * *

In L. & N. R. R. Co. *vs.* Pittsburg and K. Coal Co. 111 Ky. 960, quoted with approval by the opinion in the case, *supra,* another such preferential contract was condemned in the following language: "In our opinion the contract with the Cannel Creek Coal

Company giving them exclusive use of the switch for Coal purposes was against public policy and absolutely void." In other cases brought to this court, contracts of the character of that here assailed, have been declared absolutely void. Comlth. *vs.* L. & N. R. R. Co. 27 R. 497; Anderson *vs.* Jett 89 Ky. 375. And looking to the decisions of the courts of last resort of other states with respect to such contracts we find nearly all of them in harmony with our own, those here cited being strongly in point. Peoria and R. I. R. R. Co. *vs.* C. V. M. Co. 68 Ill. 489; Munn *vs.* Ill. 94 U. S. 126; McCoy *vs.* R. R. Co. 13 Fed. Rep. 5; Inter Ocean Co. *vs.* Associated Press 184 Ill. 448; Chicago & N. W. R. Co. *vs.* People, 56 Ill., 365; Sanford *vs.* R. R. Co. 24 Pa. 382; State *vs.* Hartford & N. H. R. Co. 29 Conn. 538.

1243 While a railroad company must be conceded the power to regulate transportation of passengers and freight on its own road, it cannot exercise it in such a manner as to unduly advantage certain individuals and exclude others, or to foster a particular industry by crippling another. It will not be allowed to so operate its road or conduct its business as to promote monopoly or stifle competition, for the one is necessarily hurtful to the public and therefore against public policy, while the other is the best protection to the public. A railroad company is, therefore, without power to enter into a preferential or exclusive contract with any of its patrons. If possessed of such power railroad companies might, as said by Judge Baxter in the Stock Yards case of L. & N. R. Co. *vs.* Coe, *supra*, "destroy a refractory manufactury, exterminate, or very materially cripple competition, and in large measure monopolize and control the several branches of useful commerce, and dictate such terms as avarice may suggest. We think they possess no such power

1244 to kill and make alive. Impartiality in serving their patrons is an imperative obligation of all railroad companies, equality of accommodation in the use of railroads is a legal right of everybody. The principle is founded in justice and necessity and has been uniformly recognized and enforced by the courts. A contrary idea would concede the railroad companies a dangerous discretion, and inevitably lead to intolerable abuses. It would to a limited extent make them masters instead of servants of the people." * * *

It is apparent from the evidence appearing in the record in the case at bar, that appellant's compliance with the Bourbon Stock Yards preferential contract, has given that company undue advantage over appellee and thereby injured the latter's business and if continued will cause it greater injury. It is equally apparent from the evidence that the existing facilities of appellant to interchange traffic between its lines and those of the Southern Railway Co. when it reaches Louisville, leaves no difficulty in the way of the delivery to appellee of the live stock consigned to it over appellant's

1245 road. In response to appellant's 5th contention, it is only necessary to say that the switching and delivery of cars imposed upon it by section 213, State Constitution, and the judgment appealed from, do not violate any contract between it and the state created by its charter, or require the use of its tracks by the Southern Railway Company.

Appellant is only required to switch its cars onto other tracks and to allow its cars to be thus used in the switching. The performance of such duties may, as held by the numerous authorities cited in the opinion, be required as incidental to the operation of the railroad. If a railroad company can be required, as a part of its service due the public, to transport the cars of another company over its lines, it may also be required to switch its own cars upon the track of another and connecting road for purposes of delivery.

Appellant's charter privision, relied on as exempting it from the performance of the duties required by section 213, *supra,* is not such a contract as will excuse it.

1246 No doctrine is better settled than that a railroad company takes its charter, holds its property and franchises and operates its road subject to the conditions and limitations imposed by the state in its Constitution and general laws, and also subject to future constitutional provisions and future general legislation. As said by Mr. Justice Brown in Min. & St. L. Ry. Co. *vs.* Minn. R. R. & Warehouse Co., 186 U. S. 261, "It is impossible for the state to exercise this power of regulation without interfering to some extent with the power of the railroad company to contract with either its customers or connecting lines."

In Penn. R. R. Co. *vs.* Miller, 132 U. S. 75, it was held that "Neither the original charter of the railroad company, nor subsequent acts conferring additional privileges constituted such a contract between the state and the company as exempted the latter from the operation of the subsequently adopted constitution of Pennsylvania; that a constitutional provision as applied to the company in respect to cases afterwards arising did not impair the obligation of any contract between it and the state; and that the company took its charter subject to the general law of the state and to such changes as might be made in such general law, and subject to future constitutional provisions and future general legislation, since there was no prior contract with it exempting it from such enactment." Lou. Water Co. *vs.* Clark, 143 U. S. 1; L. & N. R. R. Co. *vs.* Ky. 161 U. S. 677.

1247

We are unable to find any merit in the 6th and 7th contentions of appellant, that to require of it performance of switching would put it to increased cost and necessitate its parting with the possession and control of its cars into the possession of another and rival company and thereby deprive it of its property without due process of law, contrary to the 14th amendment to the constitution of the United States. These contentions we have already in effect answered. Neither in principle or in fact will the switching and delivery of cars demanded of appellant deprive it of its property. The duties to be performed are incidental to the transportation of freight in bulk in the business of railroads and requires only a necessary and not unreasonable temporary use of appellant's cars by the Southern Railway in unloading stock at appellee's stock yards after its transportation over appellant's road has been completed.

1248

That such switching is not an unreasonable or an unusual use of the cars of one company by another is made plain by the agreement

appearing in the record whereby the railroads of the country, including appellant, have agreed upon a uniform charge for rental of their cars when used by other roads. It is not perceived that appellant can consistently demand to be relieved of the performance of switching duties required by the provisions of the state constitution, in view of its having already agreed to perform these duties, and of its willingness to yet perform them, for all other railroads that do not require live stock to be switched to appellee's yards.

In the case of L. & N. R. R. Co. *vs.* Comlth. of Kentucky,
1249 183 U. S. 513, we find the following pertinent statement of the law as to the property rights of a railroad company in its relations to the state: "It is said that while it is true that railroad companies receive their rights to exist and to maintain their roads from the state, yet their ownership of such roads is property and as such is protected from arbitrary interference by the state. But though it be conceded that ownership in a railroad is property, it is property of a kind that is subject to the regulations prescribed by the state."

Appellants' cars like its road bed and track are property held for public purposes. Private property may be taken for the construction of the railroad on the ground that it is taken for public purposes, and when the railroad is constructed, it holds its property for public purposes. It must serve the public and cannot complain that its cars are used, even by another railroad company, if it is done in the usual course of the railroad business and for the benefit of a consignor or consignee entitled to the transportation or delivery
1250 of freight in bulk and contained in such cars. If this is in a sense the taking of its property for private purposes, appellant must as a common carrier, submit to it for it is only a temporary and necessary use of its property. Appellant cannot suffer loss by such use of its cars. If it delivers its cars to the Southern Railway to be taken to appellee's stock yards for the loading or unloading of stock, that company has no right to detain them longer than a reasonable time for that purpose and must return them.

Appellant may charge a reasonable amount for the use of its cars, and if they are not returned, or if detained an unreasonable time, it may sue the delinquent road for damages, or apply to a court of equity for a mandatory injunction to compel the return of the cars. Indeed, it can suffer no loss which the law may not remedy.

By the regulation between railroads, cars are interchanged from one road to another at a fixed charge. In brief appellant's contention comes in substance to this: that it has a right to discriminate
1251 and not allow all roads for all purposes to use its cars. This is the very evil that the constitutional provision in question was intended to prevent.

Appellant's 4th contention, though laid aside until the others were disposed of, is not difficult of solution. Are the requirements that appellant shall recognize the right of owners, consignors and consignees to change destination *in transitu*, a regulation of interstate commerce and violative of the Federal Constitution, as claimed?

On this subject, Hutchison on Common Carriers sec. 134, has this

to say: "When there has been no agreement to ship the goods which will make the delivery of them to the carrier a delivery to the consignee and vest the property in him, the shipper may, even after the delivery to the carrier and after the bill of lading has been signed and delivered, or after the goods have passed from the possession of the initial carrier into that of a succeeding one, alter their destination and direct their delivery to another consignee unless the bill of lading has been forwarded to the consignee first named, or to
1252 some one for his use. But after the carrier or his agent has given one bill of lading or receipt for the goods it cannot give another, unless the first and all the duplicates have been returned to him."

Also in section 337 it is said: "So long as the goods remain the property of the bailor, he may countermand any directions he may have given as to their consignment, and may at any time during the transit require of the carrier there re-delivery to himself; and if such re-delivery can be made without too much inconvenience, or expense to the carrier, he will be bound to make it. A carrier is employed as a bailee of a person's goods for the purpose of obeying his directions respecting them, and the owner is entitled to receive them back at any period of the journey where they can be got at. To say that a carrier is bound to deliver goods according to the owner's first directions is a proposition wholly unsupported either by law or common sense. I can well understand the case of goods being placed in such a position that they cannot easily be got at though it is usually otherwise. But if the goods are demanded by the owner
1253 during the transit, when the carrier is willing and able to fulfill the contract on his part, the latter will be entitled to his full freight for the whole distance to the destination to which they were originally directed, and any expense he may be put to in unloading. If this be tendered and he refuse to restore the goods it will amount to a conversion. The owner cannot, however, it is said change the destination and require delivery somewhere else except upon the basis of a new contract, after the carrier has completed his undertaking and carried the goods to the destination first agreed upon." Sutherland *vs.* Second Nat. Bank 78 Ky. 250. L. & N. R. R. Co. *vs.* Hartwell 99 Ky. 436; Strahorn *vs.* Union Stock Yards and Transit Co. 43 Ill. 424.

We do not understand it to be denied by counsel for appellant that the consignor may change the consignee; but it is denied that he can change the destination, and insisted that if the exercise of the right to change either requires of it the performance of the switching duties demanded by appellee under section 213 of the Constitution,
1254 it will amount to a regulation of Interstate Commerce.

When a shipment is made from another state and reaches appellants break-up yards in Louisville, the shipper has a right to demand there his stock. When he does make this demand the interstate shipment is ended, and if he demands it he has a right, under the laws of this state, to have it delivered by appellant to another carrier with whose road it there has physical connection, to be shipped to another point in Louisville or within the state, upon reasonable

charges. This shipment within the state is not interstate commerce. If in a shipment from Tennessee to Louisville, the shipper had stopped the car at Elizabethtown, no doubt would exist of his right to take the stock, and if he then shipped it to another point in the state, it would not be material that the first shipment was from Tennesssee.

We are referred by the briefs of counsel to numerous authorities on this question, but we can take time to consider only such of them as we regard decisive thereof. On of the most pertinent of them is an excerpt from Mr. Justice Miller's discussion of the difference between state and interstate commerce, "It may be thus stated:
1255 That the power to regulate commerce is one which includes many subjects, various and quite unlike in their nature; that whenever subjects of this power are in their nature national, or require one uniform system or plan of regulation, they may be justly held to belong to that class over which Congress has the exclusive power of legislation; but that local and limited matters not national in their character which are most likely to be wisely provided for by such diverse rules as the localities and the authorities of the different states may deem applicable, may be regulated by the legislatures of those states in the absence of any act of Congress upon the same subject." (Lectures on the Const. page 454.)

It was said by Chief Justice Marshall in Gibbons *vs.* Ogden 9 Wheat. 1-203, "It is obvious that the government of the Union, in the exercise of its express powers—that, for example of regulating commerce with foreign nations and among the states—may use means that may also be employed by a state in the exercise of its acknowledged powers: that for example of regulating com-
1256 merce within the states. * * * So if a state in passing laws on subjects acknowledged to be within its control and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its authority from a particular power which has been granted to Congress, but from some other which remains with the state, and may be executed by the same means." That there has been no departure by the supreme court from the above view of the question, is clearly shown by its later decisions. For example it was said by Mr. Justice Field in Mobile County *vs.* Kimball, 102, U. S. 702, "Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the states, strictly considered, consists in intercourse and traffic including in those terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the
1257 regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate states is not, therefore, permissible. Language affirming the exclusiveness of the grant of

power over commerce as thus defined may not be inaccurate when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce." In L. & N. R. R. Co. *vs.* Kentucky, 161 U. S. 677, which was an action brought by the state to prevent the consolidation of certain railroads it was contended by the railroad company that section 201, of the Kentucky Constitution which forbids the purchase by a railroad of a competing line, is a regulation of interstate commerce and for that reason void. In rejecting that contention the court through Mr. Justice Brown said: "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may
1258 be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the states, in the fact that they impose a burden upon instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed, upon railways and their rolling stock, which are more or less, according to the policy of the state within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce which are treated as a direct burden. There are certain intimations in some of our opinions which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitutiton. But while this is true with respect to the commerce itself, it is not true with respect to
1259 the instruments of commerce. * * * It has never been supposed that the dominant power of Congress over interstate commerce took from the states the power of legislation with respect to the instruments of commerce so far as the legislation was within its ordinary police powers. Nearly all the railways of the country have been constructed under state authority and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railway, Congress reserves to itself the superior right to control their commerce, and to forbid interference therewith; while to the states remains the power to create and regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

1260 In L. & N. R. R. Co. *vs.* Ky., 183 U. S. 503, it was contended by the railroad company that section 218 of the State constitution, forbidding a railroad's charging more for a short haul of freight than for a long one, was void because ir interfered with interstate commerce. The court, Mr. Justice Shiras writing unani-

mously declared: "It is plain that the provision in question does not in terms embrace the case of interstate traffic, It is restricted in its operation to those who own, or operate a railroad within the state, and the long and short distances mentioned are evidently distances upon the railroad line within the state. The particular case before us is one involving only the transportation of coal from one point in the state of Kentucky, to another by a corporation of that State. It may be that the enforcement of the state regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally: but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial
1261 power of the general government, to be unlawful, must be direct and not the mere incidental effort of enforcing the police powers of a state. (N. Y. L. E. & W. R. Co. *vs.* Penn. 158, U. S. 431; Henderson Bridge Co. *vs.* Ky. 166 U. S. 150.) A discussion of this subject will be found in the opinion of this court in L. & N. R. R. Co. *vs.* Ky. 161 U. S. 701 where the same conclusion was reached."

The following additional authorities bearing upon the same question are in harmony with those *supra*, viz: N. Y. N. H. & H. R. R. Co. *vs.* N. Y. 165 U. S. 628; Hopkins *vs.* U. S. 171 U. S. 578; L. S. & Mich. S. Ry. Co. *vs.* Ohio, 173 U. S. 285; Chicago M. & S. P. Ry. Co. *vs.* Beeker 32 Fed. Rep. 849; Iowa *vs.* Chicago M. & S. P. Ry. Co. 33 Fed. Rep. 391; The two last being specific switching cases.

The conclusion deducible from the foregoing authorities is, that section 213 of the Kentucky Constitution, requiring interchange and switching of cars, is a valid exercise of the police power of the state; that it is not intended to affect interstate commerce,
1262 and that such effect as it may have thereon is purely incidental and indirect, and this being true, it is not to be regarded as a regulation of interstate commerce within the meaning of the Federal Constitution, or Interstate Commerce Act.

The supreme court long ago adopted the rule that it would accept the construction of a state constitutional provision or statute adopted by the highest court of such state, provided they do not conflict with some provision of the Federal Constitution or Federal Statutes. Green *vs.* Neal, 6 Peters, 291; Fairfield *vs.* Gallatin 100 U. S. 47; Post *vs.* Supervisors 105 U. S. 667; Leeper *vs.* Texas, 139 U. S. 462; *In Re* Duncan 139 U. S. 499.

As we understand the decisions of the Supreme Court, it will in a case like the one at bar apply the same test applied by the state courts, which is, whether or not the constitutional provision or statutory provision, as the case may be, can be enforced within the particular state without affecting the railroad company with
1263 respect to the performance of its duties in other states. W. U. Tel. Co. *vs.* James, 162 U. S. 650; Lake S. & Mich. S. Ry. Co. *vs.* Ohio, 173 U. S. 309. Applying that test to the constitutional provisions under consideration, it is, we think, manifest

that they do (not regulate appellant's duties in any other state, but only such) as are purely local and to be performed within this state. In other words these provisions are directed to the instrumentality and not against the commerce itself. It is a mere exercise of that power of which Mr. Cooley says "It cannot be doubted that there is ample power in the legislative department of the state to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public impartially. And to make every reasonable provision for carrying with safety and expedition. (Cooley's Const. Lim. (6 Ed. page 715.)

The enactment of sections 818-819, Kentucky Statutes, the latter providing penalties for a violation of the provisions of the former, was but a further exercise of this power of the state and de-
1264 signed to provide a means of compelling obedience to the mandatory provisions of the Constitution contained in the sections *supra*.

In our opinion the power of the state, by appropriate change in its organic law, or by legislative enactment, to provide for the public convenience, stands upon the same ground as its power by such legislation to protect the public morals or the public safety. We would not be understood as holding that if appellant were required to deliver to appellee at a point of physical connection with the road of the Southern Railway Company, in Louisville, cars passing through Kentucky from one state into another, or cars received from a point in Kentucky for further transportation by way of Louisville, into another state. it would not be an interference with interstate commerce or a regulation thereof. However, that question is not here presented for decision. It is only insisted that appellant be required to perform the duties of switching by a mere delivery, in the customary manner, of live stock to the con-
1265 signee, at the point of destination in obedience to the instructions of the owner or shipper, and such service, we think, it should be required to perform whether the live stock is shipped over its lines to Louisville from a point within the state or brought there from another state. For the courts to compel the delivery by a common carrier of live stock to the consignee at the point of destination, according to the custom obtaining among railroads and in obedience to the demand of the consignor, whether the freight come from a point within or without the state, is not a regulation of interstate commerce. And if the delivery of freight can thus be compelled, the carrier may also be required to receive it for such delivery at all stations on its lines within this state.

Judgment affirmed.

Whole court sitting. Judge Barker dissenting.

W. M. SMITH,
DODD & DODD,
For Appellee.

HELM, BRUCE & HELM,
CHARLES N. BURCH,
For Appellant.

1266 Be it remembered that on the 20th day of November, A. D. 1906, at a Court of Appeals held at the Court of Appeals, a dissenting opinion was delivered by Judge Barker, and which is as follows:

1267 Court of Appeals of Kentucky.

Nov. 20, 1906.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Appeal from Jefferson Circuit Court (First Chancery Division).

Dissenting Opinion by Judge Barker.

The opinion of the majority of the court requires the Louisville and Nashville Railroad Company to turn over its cars, loaded with stock, to the Southern Railway Company, to be transported by it to the Central Stock Yards Company, a depot on its lines, there to be unloaded, without any requirement that the latter company
1268 shall pay for the use of the cars while it has them, and without any definite provision for their return to the owner after being unloaded. This, I hold, is taking private property in violation of our state constitution and the fourteenth amendment to the constitution of the United States.

The Kentucky constitution provides, in section 13 of the Bill of Rights: "* * * nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him." And section 2: "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

The fourteenth amendment of the constitution of the United States, in so far as it is applicable to the question in hand, provides: "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

1268½ The conclusion of the majority of the court is rested upon section 213 of the constitution, which, it is said, justifies the judgment of the chancellor below. This is as follows: "SECTION 213. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, draw-

back or rebate in favor of any person, corporation, consignee or consignor, in any manner as to payment, transportation,
1269 handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

The fundamental error in the opinion, as I see it, is in construing section 213 to require appellants to deliver its cars to a rival carrier. In reaching this construction, the court recites as an argument in its favor. that the debates in the constitutional convention relative to section 213 show, or tend to show, that that Body desired to impose upon railroads the interchange of cars in the interest of public commerce, so that every such carrier would not only be obliged to receive and forward all carloads of freight brought to it by another, but to turn over its own cars to any connecting road for the purpose of transporting freight to points on the connecting road and beyond the line of the owner of the cars.

I have carefully read the debates of the convention, and
1270 fail to find any trace of such an intention.

Section 213 was prepared and introduced by the delegate from the fourth district of the City of Louisville, who announced in the convention that he, alone, was the author and responsible for its introduction. That there may be no mistake upon this question, I quote his exact language: "I assume its entire responsibility. I wrote every line of it; not only that, but I submitted it to the ablest legal minds in the United States." (Debates Constitutional Convention, vol. 4, p. 5127.) As this assertion was unchallenged by any member, we may assume that there was no contrariety of opinion as to the authorship of the proposed section which is now 213; and, as the author was a learned lawyer who had been actively litigating the wrongs which the section was to remedy, for many years prior to the meeting of the convention, it may be assumed that he understood what he desired to accomplish
1271 by the section, and what the language used in it meant. No one can read the thirty or forty pages of the reports of the convention on the subject of this section without being impressed with the fact that the trouble which had existed before, and which it was proposed to remedy. was the discriminatory refusal of certain railroads to *receive* and *transport* carloads of freight brought to them by certain other roads, and there is an entire absence of any thought on the part of the convention, that railroads should be forced to *deliver their own cars* to connecting lines to be carried beyond the lines of the owners.

The author and proposer of the section under discussion was allowed to debate his side of the proposition, that the proposed section should be adopted, alone, and in explaining its meaning he spoke often, fully and freely. I have selected the following excerpts from his explanation as to what the proposed section meant,

in order that there may be no doubt as to what he said on this subject:

1272 "All this section (213) means is, that it shall do exactly the same business for one road that it does for another, upon the same terms, and I hope that amendment will not prevail. *You cannot use anybody's property without paying for it, and the object of this is not to take people's property without paying for it,* but simply to declare, where they render service to one corporation or individual, they shall render the same service to another corporation or individual at the same price. I do not believe anybody can deny the justice of that provision." (Vol. 4, pp. 5118-5119.)

"We do not want to take it. We do not want to run trains across any thing. We simply want to say that *when you offer to carry for one person, you shall carry for another person* at the same price." (Vol. 4, pp. 5132-5133.)

"We say they shall *receive*. The gentleman says you must not make them *receive*." (Vol. 4, p. 5136.)

1273 "I could do it, but you have discussed your substitute; I am on mine. All that this demands is, that when one road *brings up freight to another, that it shall be compelled to take it alike for all.*" (Vol. 4, p. 5136.)

"No, sir; I think every railroad should be compelled to *receive freight* at the point of intersection. Anything else will amount to a destruction of interchange between them." (Vol. 4, p. 5138.)

"Again and again he exclaims: Why do you not do that? Because it has no application here. There is no provision in this section for one company to use the terminal facilities of any other company. It says not a word about any use. Nobody wants to use them; but we do want, *when they take cars from one company, when they take freight from one individual, and haul them, that they shall take cars and freight from every other individual on exactly the same terms.* There is no taking of terminals; there is no use of tracks. This section contains no such phrases, and is subject to no such interpretation. It only requires a fair, honest, equal, uniform conduct of business to all alike, from whomsoever or wherever they come, be they Jew, Greek, Gentile, bond or free, that all shall receive exactly the same treatment, and be put on the same footing." (Vol. 4, pp. 5156-5157.)

1274

It will thus be seen that, while there is some general language as to serving the public alike and without discrimination, it was all directed to the discrimination resulting from the refusal to *carry* freight for all alike. It is evident that the framers of the constitution did not intend to place a new burden upon railroads, but to compel them to fully and fairly discharge an old duty imposed upon them by the common law.

At the common law there is no duty imposed upon railroads to carry freight beyond their own lines, or to furnish cars to any connecting road so to do. Central Stock Yards Company *v.* Louisville and Nashville Railroad Company, 118 Fed. Rep., 113, and the cases there cited. But it was, and is, their duty, growing out of the nature of their business, to carry all freight brought to them without dis-

criminating in favor, or against, any person or corporation.

1275 It was strictly within the line of their duty to transport the loaded cars brought to them by connecting roads before the adoption of the constitution. It was, therefore, no hardship to require them to take the freight in the loaded cars of other roads without discrimination; indeed, it is very much to their interest so to do, as it facilitates commerce, lessens their labors, and increases their remuneration. But it is a very different proposition to require a railroad, against its will, to deliver to a connecting line its rolling stock to be taken out of its possession and control, and placed in the possession and dominion of the connecting carrier. And it is too obvious to need elaboration, that, if a state can require a railroad to thus deliver to another its rolling stock, without regard to what it may receive in return from the connecting road, it is not only possible, but at times very probable, that a railroad will be so crippled by the loss of its cars as to be unable to perform its primary duty of transporting freight between its own termini. Without stopping at present to discuss this view of the question, it seems to me that it is

1276 as serious reflection upon the wisdom and the justice of the framers of the constitution to assume that they intended to accomplish by section 213 so radical and far-reaching an end, and yet made no provision for, or even allusion to, a railroad thus deprived of its rolling stock being remunerated in any way for its loss, or having any guaranty for the return of its property. There was no necessity for any guaranty if the section be limited in its meaning to receiving and carrying freight in carload lots, as a railroad will only receive carloads of freight when the connecting carrier is willing to turn them over to it, and, presumably, when this is done by consent, the parties will take care of their own interest. But the converse of this proposition is not true, for if a railroad may be deprived of its cars against its will without a provision for remuneration for their use, or a guaranty of their return, then it is clear that it lies with the corporation receiving the property, and not with the owner, to say whether or not it shall be paid for, or returned, without a law suit.

1277 My construction of section 213, that it is limited to receiving and transporting cars, is strengthened by the precaution of the framers of the constitution to protect the receiving railroad by this language: "But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business." This accentuates the view that the convention had in mind only the receiving of freight, and not the delivery of cars against the consent of the owner; and shows a disposition to guard against loss wherever there was danger of its being inflicted. It seems to me unbelievable that these wise and conservative men would have placed one carrier so completely in the power of another without any proivsion looking to the ultimate protection and remuneration of the corporation against the loss, and for the use, of its property.

Section 216 of the constitution is as follows:

1278 "All railway, transfer, belt lines and railway bridge companies shall allow the tracks of each other to unite, intersect

and cross at any point where such union, intersection and crossing is reasonable or feasible."

Here we have a provision which requires every railroad in the State to permit a physical connection with any other railroad at any feasible point along its line; and if the court's construction of section 213 is sound, it is very clear that any railroad in the State may become the prey of any other road which chooses to make a connection with it. To illustrate: A Railroad is built between Bowling Green and Louisville. The company is organized for the purpose and with the view of serving the public along the line of its road between those points. In order to discharge the duty imposed upon it by the common law, it procures a sufficient number of cars to carry all
1279 freight that is brought to it for transportation. Now, let us suppose that another railroad connects with it, whose stockholders do not choose to purchase a sufficient quantity of rolling stock to carry on its business; it is easy to see that under the rule laid down here it would not be difficult for the second railroad to soon get possession of any number of cars belonging to the first, and put them to use in its business; and practically the first will be helpless, as an action in trover or detinue will not furnish an adequate remedy. Before the process of the court could be enforced, or other cars purchased to supply the loss, incalculable injury might be done by the failure of the first road to have the use of its rolling stock. The law in one breath requires a railroad to keep on hand a sufficient quantity of rollingstock to discharge all of the business brought to it; it ought not in the next make this impossible by placing it in the
1280 power of another railroad to deprive it of its equipment for an indefinite time. And certainly the court ought not to reach the conclusion that the framers of the constitution meant to do this, without providing some remedy against ultimate loss, unless the language used excludes by its rigor a more reasonable construction.

It is no answer to all this to say that it is the custom of railroads to interchange cars, and that they have a fixed agreement for the remuneration of the owner when a connecting carrier uses its rolling stock. That is a matter of contract, and leaves every road free to protect itself in making its contract of interchange. The basic principle running through the custom, where it exists, is that the interchanging roads will receive from each other approximately the same number of cars, and with this in view remuneration is fixed, more as a matter of book-keeping than of rental; and it must not be for-
1281 gotten that this custom is based upon the right of each road to keep its own cars within its termini whenever its interest demands this to be done. It leaves each carrier free to refuse to deliver its cars to any road whose business does not supply in exchange an equal number of cars which it receives. In other words, each road has the power of protecting itself, and keeping its own property when it desires so to do. It seems to me a poor argument, that, because the owner rents his house for a number of months when he does not need it, he should, therefore, be required, against his consent, to give it to another when he needs it himself.

In Lake Shore, &c. Railway *v.* Smith, 173 U. S., 697, in referring

to a statute of Michigan which sought to compel the issue of a certain class of tickets with certain designated privileges attached, the Supreme Court of the United States, in holding the act unconstitutional, said:

"It is no answer to the objection to this legislation to say
1282 that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in a legislature to pass a statute in relation to the same business imposing additional burdens upon the company."

It was this consideration, doubtless, that induced the Supreme
Court, when the inter-state branch of this case was before it,
1283 to construe section 213 to relate entirely to the receiving of cars, and to conclude that it did not require the enforced turning over by one road of its rolling stock to another. Central Stock Yards Company *v.* Louisville and Nashville Railroad Company, 193 U. S. Rep., 568. This litigation was divided into two branches, one brought in the federal court and the other in the Jefferson circuit court; the first to restrain the Louisville and Nashville Railroad from refusing to deliver its cars loaded with inter-state commerce to the Southern Railway to be unloaded at the Central Stock Yards, and this in the state court to restrain it from refusing to deliver its cars loaded with intra-state commerce to the same road for the same purpose; the only difference being that in the first the cars were loaded with stock from Tennessee, and in the second they were loaded with stock shipped from points in Kentucky. The same questions made here were made in the federal court. The Supreme Court, after pointing out that the third section of the inter-state commerce act did not authorize the granting of the prayer of the bill, said:

1284 "We also lay on one side the question whether the section of the constitution of Kentucky (213) is or not invalid as an attempt to regualte commerce among the states. For we are of opinion that the defendant's conduct is not within the prohibitions or requirements of either the Act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed." Again it is said: "In view of the course taken by the argument we may add that we do not find a requirement that the railroad company shall deliver its own cars to another road. The earlier part of section 213 provides that all railroads shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in carloads or less quantities, coming to or going from any railroad, * * * with equal promptness and dispatch,

and without any discrimination * * *" Promptness and
1285 the absence of discrimination are the point, and that shows that the words 'coming to or going from any railroad,' qualify the words 'empty or loaded cars' as well as 'freight,' and therefore that the cars referred to are cars from other roads. The same thing is shown by the word 'receive,' which is the starting point of all that relates to cars. See Louisville & Nashville R. R. Co. *v.* Commonwealth, 108 Ky., 628, 633. The other sections of the Constitution need no special remark."

It is true, that this Court is not bound by the construction of the Supreme Court of the United States of our constitution or statutes; on the contrary, it is true, that after this court has construed our constitution or statutes, the Supreme court, for the purposes of any federal question which may arise thereon, will adopt the construction of this court; but it seems to me that where, as here, our constitution has come before the Supreme Court of the United
1286 States in advance of an adjudication from our own court, and that tribunal has been forced to place a construction upon a section of it, this construction should, at least, be highly persuasive when the same section afterwards comes before us.

In my opinion, taking into consideration the debates of the constitutional convention, the wrong to be remedied, and the language used, as well as the hardship arising from a contrary construction, the view of the Supreme Court of the United States, as to the meaning of section 213, is sound.

As, however, the court has declined to follow the construction of the Supreme Court, and holds that section 213 authorizes the taking of appellant's cars from its possession, and turning them over to the possession and control of the Southern Railway Company, it remains to consider whether or not this section, as thus construed, is in conflict with the fourteenth amendment of the federal constitution, which forbids the taking of property without due process of
1287 law.

I presume it will not be questioned that the cars are the private property of the owner within the meaning of the federal constitution, and that it is only necessary, therefore, to ascertain whether the judgment under discussion is a "taking" within the meaning of the due process clause of the fourteenth amendment.

I do not believe that, if the Southern Railway should take the cars of the Louisville and Nashville Railroad without the judgment of the court, and do with them just what it does under the judgment, anybody would doubt that that was a wrongful taking of property for which the owner could at once institute an action at law, either to recover the property itself, or damages for its wrongful conversion. The effect of the constitution, as embodied in the judgment, on the property of the Louisville and Nashville Railroad, produces the precise result, so far as the loss is concerned, that
1288 would take place if the Southern Railway should take it on its own initiative. The Louisville and Nashville Railroad is deprived of its property to the same extent in each case. It must, then, be true, that the judgment of the court enforcing the consti-

tutional provision under discussion, is a taking of the property of appellant within the meaning of the due process clause of the federal constitution.

Blackstone, in his Commentaries, vol. 2, p. *2, says: "There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." Any act, then, which, deprives the owner of the sole and despotic dominion of his property, which he claims and exercises in total exclusion of the right of any other individual in the universe, must be a "taking," since that act
1289 violates the fundamental definition of property as laid down by the learned author above quoted.

McGehee, in his work on Due Process of Law, p. 291, thus states the requirements of a taking within the meaning of the constitution:

"According to the broad and equitable doctrine of modern cases, it is not necessary to constitute a 'taking' of property for public purposes that the actual occupancy or possession of the property should be assumed and its title acquired. A physical interference with property which substantially abridges the owner's right to use and employ it and to exclude others from its use takes his property to just the extent that he is deprived of its enjoyment. A serious interruption to the common and necessary use of property has been said to be equivalent to taking it within the constitutional provision, and it is not necessary that the land be absolutely taken."

In the case of United States v. Lynah, 188 U. S., Rep.,
1290 445, it was held that the flooding of the owner's lands by a public improvement carried on by the United States Government whereby he was temporarily deprived of its use, was a taking of private property within the inhibition of the fifth amendment of the United States constitution.

The case of Missouri Pacific Railway *v.* Nebraska, 164 U.S. Rep., 403, involved this question: Under the constitution, and a statute of Nebraska, the effect of which, as construed by the state court, fully authorized what was done under them, the railway company was required to permit certain private parties to build grain elevators on its right of way, which it was not using at the time; it also appeared that others had been permitted to build elevators on the right of way near the railroad tracks. On writ of error to the Supreme Court of the United States, the question arose as to whether or not this was a taking of private property without due pro-
1291 cess of law. In the opinion it was said:

"This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion, that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation,

for the private use of the petitioners. The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amednment of the Constitution of the United States. Wilkinson *v.* Leland, 2 Pet., 627, 658; Murray *v.* Hoboken Co., 18 How., 272, 276; Loan Association *v.* Topeka, 20 Wall., 655; Davidson *v.* New Orleans, 96 U. S., 97, 102; Cole *v.* La Grange, 113 U. S., 1; Fallbrook District
1292 *v.* Bradley, *ante*, 112, 158, 161; State *v.* Chicago, Milwaukee & St. Paul Railway, 36 Minnesota, 402."

To the same effect is State of Minnesota *v.* Chicago, Milwaukee & St. Paul Railway Co., 36 Minn., 402.

In the case of Chicago, Burlington &c. Railroad *v.* Chicago, 166 U. S., 226, it was said:

"It is proper now to inquire whether the due process of law enjoined by the Fourteenth Amendment requires compensation to be made or adequately secured to the owner of private property taken for public use under the authority of a State."

Then, after reviewing a great number of authorities bearing upon the question, the court concluded:

"In our opinion, a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, want-
1293 ing in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument."

See, also, Davidson *v.* New Orleans, 96 U. S., 97; Fletcher *v.* Peck, 6 Cranch, 135-6; Loan Association *v.* Topeka, 20 Wall., 655; Gardner *v.* Newburg, 2 Johns Chy., 162; Searle *v.* School District, 133 U. S., 553; Scott *v.* Toledo, 36 Fed., 385-396; Mount Hope Cemetery *v.* Boston, 158 Mass., 509; Cooley's Edition of Story on Constitution, section 1596.

From the foregoing authority the rule is deduced that in order for a State to take private property for public use consistently with the due process clause of the federal constitution, it must establish a mode of ascertaining the damage and providing for payment to the owner. If this is not done the statute is void.

1294 It is also clear that while state governments may regulate corporations under the police power, yet, as said in Lake Shore &c. Railway Company *v.* Smith, 173 U. S., 689: "This power must, however, be exercised in subordination to the provisions of the Federal Constitution. If, in the assumed exercise of its police power, the legislature of the State directly and plainly violates a provision of the Constitution of the United States, such legislation would be void." Again; "A railroad company, although a quasi

public corporation, and although it operates a public highway, Cherokee Nation *v.* Southern Kansas Railway, 135 U. S., 641; Lake Shore &c. Railway *v.* Ohio, 173 U. S., 285, 301, it has nevertheless rights which the legislature can not take away without a violation of the federal constitution, as stated in Smyth *v.* Ames, 169 U. S., 466, 544. A corporation is a person within the protection of the Fourteenth Amendment. Minneapolis & St. Louis Railway *v.* Beckwith, 129 U. S., 26; Smyth *v.* Ames, 169 U. S., 466, 522, 526.

1295 Although it is under governmental control, that control must be exercised with due regard to constitutional guarantees for the protection of its property."

In the case of C ntral Stock Yards Company *v.* Louisville Railroad Company, *supra,* on the question we have in hand the Supreme Court said: "On the other hand if the cattle are to remain in the defendant's cars it can not be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant, or require it to make one." (Authorities omitted.)

It seems to me to require no argument to show that the net result of the court's action in this case is to take the property of the appellant and give it to the Southern Railway; that after it is so given the Southern Railway may use it as long as it chooses, perhaps destroy it in a railroad wreck, and leave the owner with only an action at law to recover its property, or its value, taking the chance of the Southern Railway being solvent. After being unloaded, it is

1296 easy to see that these cars, instead of being returned, may be put in use by the Southern Railway, carried out of this state, and therefore, beyond the jurisdiction of this court, or any court in Kentucky. If the Southern Railway desires the cars of the Louisville and Nashville Railroad, it now has an endless chain, through the operation of the opinion of this court, with which it can draw from it all of the rolling stock that it needs, leaving the denuded corporation, perhaps, unable to perform its duty to the public, or to earn dividends for the stock-holders. In other words, it is not going beyond the language of conservatism to say that it is entirely within the power of the Southern Railway, considering the general shortage of cars existing all over the country, to bankrupt the Louisville and Nashville Railroad by taking its cars under the order of this court, leaving it with only a claim for their rental at a sum which may be entirely nominal. The rate fixed for the

1297 rental of a railroad's surplus cars affords no just criterion by which to gauge the loss of those necessary to perform the business for which it was chartered.

On the subject of the inter-state commerce feature of this case, I have only this to say: This litigation was begun by bringing the present suit in the state court. After the granting of the preliminary injunction, a question arose in the circuit court as to whether the terms of the injunction covered inter-state shipments, as well as intra-state shipments, or covered only the latter class of shipments. The circuit court interpreted its own order as covering both classes

of shipments, and accordingly imposed a fine on the railroad company for disobeying the order of injunction in refusing to switch certain cars which had come from another state. The railroad company applied to this court for an order of prohibition against the judge of the circuit court to prevent him from enforcing the
1298 order of punishing for contempt of court on the ground that the preliminary injunction did not cover inter-state shipments; and this court held that the order did not cover such shipments, and, therefore, granted the prohibition asked for. (Louisville and Nashville Railroad Company *v.* Miller, 23 Ky. Law Rep., 1714). Immediately following this proceeding, the Stock Yards Company, instead of moving the circuit court to extend its order of injunction, filed a bill in the United States Circuit Court, in which it alleged exactly the same facts and sought exactly the same relief, so far as the inter-state shipments of stock were concerned, as it sought in the state court. The United States Circuit Court dismissed the bill, whereupon the case was appealed to the United States Circuit Court of Appeals, where the judgment was affirmed, and from which judgment a further appeal was taken to the Supreme Court of the United States, where again the judgment was affirmed; the affirmance by the Circuit Court of Appeals being upon the ground that
1299 section 213 of the Kentucky constitution, if given the construction contended for by the Stock Yards Company, is a regulation of inter-state commerce, and therefore, void; while the affirmance by the Supreme Court was upon the ground that the section in question was not properly susceptible of the interpretation contended for by the Stock Yards Company, and that the acts of the Railroad Company were not in violation of that section, when properly construed.

The bill filed in the federal court expressly sought to accomplish the purpose of the Stock Yards Company by claiming the right to stop the inter-state shipments in transit, and to change the destination thereof, so as to require the delivery of the stock after reaching the State of Kentucky, in accordance with section 213 of the Kentucky constitution; it being alleged in the federal court bill that the railroad company refused to permit the consignor or the consignee, or both, to change the destination of shipments, and have same switched and transferred to the Southern Railway Company for delivery at the Central Stock Yards, and a part of the prayer
1300 of the bill being that the railroad company be required to recognize the right of parties to change destination of shipments and to make delivery as demanded pursuant to such change. But this relief, as well as all other relief sought by the bill in the federal court, was, of course, denied in the dismissal of the bill.

After this decision by the federal courts, the railroad company offered in the state court an amended and supplemental answer, pleading the litigation in the federal court, and the judgment therein as *res adjudicata*, making a copy of the bill in the federal court and a copy of the opinion of the Circuit Court of Appeals exhibits with the amended answer (the pleading being offered before the final affirmance by the Supreme Court) so as to show exactly

what was involved in that litigation. The circuit court refused to allow this pleading to be filed on the ground that it did not present any defense; but by an order of court made the pleading and its exhibits a part of the record for the purposes of appeal;
1301 and, thereafter entered the judgment now appealed from, requiring the railroad company to recognize the right of the shipper to change destination of shipments, and to make delivery in accordance with such change.

Thus the state court has wholly disregarded and treated as a nullity a judgment of the federal courts between the identical parties and upon exactly the same alleged cause of action. If the judgment of the federal courts refusing the relief sought is not final and conclusive between the parties, as *res adjudicata*, then I do not see how the judgment of the state court, granting the relief, will be any more conclusive; for I take it that a judgment refusing certain relief on a certain state of facts, is just as conclusive as a judgment granting the relief between the same parties upon the same state of facts. And if neither of these judgments is final, or settles the controversy between these parties, then it may go on forever.

1302 In the opinion written for the court by Mr. Justice Day, in the Circuit Court of Appeals (118 Fed., 113), it was decided that the very acts and shipments which the opinion here undertakes to regulate, was inter-state commerce, and beyond the power of State regulation; and while the Supreme Court affirmed the judgment on a different ground from that upon which the opinion of the Circuit Court of Appeals was in part, at least, rested, the Supreme Court has, in a later case (McNeil *v.* Southern Railway Company, 202 U. S., 544), expressly approved what was said in the opinion in the following language:

"The direct burden and resulting regulation of inter-state commerce operated by an alleged assertion of state authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in Central Stock Yards
1303 Co. *v.* Louisville & Nashville R. R. Co., 118 Fed. Rep., 113. The court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon inter-state commerce and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in inter-state commerce transportation to deliver cars of live stock moving in the channels of interstate commerce at a particular place beyond its own line different from the general place of delivery established by the railway company. In pointing out that if the legislation in question was entitled to the construction claimed for it, it would amount to a state regulation of inter-state commerce, it was aptly and tersely said (p. 120):

"It is thoroughly well settled that a state may not regulate inter-state commerce, using the terms in the sense of intercourse and the interchange of traffic between the States. In the case at bar
1304 we think the relief sought pertains to the transportation and delivery of inter-state freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is

sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky constitution could be given any such construction, it would follow it could regulate inter-state commerce. This it can not do.' "

I do not propose to question the right of the owner of property to stop it in transit where this imposes no additional expense or trouble on the carrier; but I do question his right to change the contract between him and the carrier while the goods are in transit so as to evade the constitution and laws of the United States. The particular contract before us is that the Louisville and Nashville Rail-
1305 road would haul stock loaded on its cars in Tennessee and deliver it at its depot, the Bourbon Stock Yards in Louisville, Kentucky. This was inter-state commerce expressly so decided by the federal courts with this very record before them. After the cars cross the imaginary line between Tennessee and Kentucky, the shipper proposes to have the carrier deliver his stock at a place and in a manner which it is conceded he had no right to require when the stock was loaded in Tennessee. And we are gravely informed that after the cars containing the stock cross the imaginary line between Tennessee and Kentucky the shipment ceases to be inter-state, and becomes intra-state commerce. In other words, that the laws of Kentucky meet the train at the line between Kentucky and Tennessee, and from that point on take charge of and control it. If this can be done in Kentucky, it can also be done in Tennessee, and Tennessee laws can take charge of the stock loaded in that State, conduct, manage and control them until they get to the line
1306 between that State and Kentucky, and after the train crosses, as said before, the laws of Kentucky will take charge of, manage and control it. This. it must be conceded, reduces the sphere of action of the constitution and laws of the national government, concerning inter-state commerce, to a very narrow space.

In conclusion, no court of last resort has enunciated oftener or more forcibly, or adhered more consistently to, the doctrine of *res adjudicata* than our own. Beginning with the leading case of Davis *v.* McCorkle, 14 Bush, 746, this court has consistently held that when a matter is once put in issue and is passed upon by a court of competent jurisdiction, it cannot be again litigated between the same parties as long as the former decision continues in force. For the first time in its history, so far as I am advised, this Court has departed from that rule.

For these reasons I dissent from the opinion of the majority of the court.

1307 Be it remembered that on the 10th day of December 1906, the appellant by its attorney filed in the office of the Clerk of the Court of Appeals a petition for rehearing:

Be it remembered that at a Court of Appeals held at the Capitol at Frankfort, the 7th day of January 1907, the following order was entered to-wit:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jeff.

Came the appellant by counsel and on motion the petition filed in the office of the Clerk of this Court is now noted of record, and moved the Court to grant a rehearing, which motion is submitted.

Be it remembered that on the 5th day of January A. D. 1907, the appellee by counsel filed in the office of the Clerk of the Court of Appeals a reply to petition for rehearing.

Be it remembered that on the 7th day of January A. D.
1308 1907, at a Court of Appeals held at the Capitol at Frankfort, the following order was entered, to-wit:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jeff.

Came appellee by counsel and on motion the reply to petition for rehearing filed in the office of the Clerk of the Court of Appeals, is now noted of record.

The Petition for Rehearing mentioned in the foregoing order is as follows:

1309 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
versus
CENTRAL STOCK YARDS COMPANY, Appellee.

Petition for Rehearing.

In view of the fact that two of the points relied upon by the appellant in its pleadings and briefs were not noticed by this Court in its opinion and judgment herein, we feel constrained to ask a
1310 consideration of those points, and file this petition for rehearing solely with reference to those two points relied upon by the appellant, so far as interstate shipments are concerned.

I.

The case as to interstate shipments, having been presented to the federals courts by appellee and in those courts decided in favor of appellant, is now *res adjudicata* and settled.

In order that the matter may be brought directly to the mind of the Court, it is not improper to make a short resume of the history of this litigation. On November 4, 1901, appellee filed its petition

in the Jefferson Circuit Court (Record, page 1, Volume 1), and thereafter, on November 11, 1901, a motion was made for a
1311 preliminary injunction by appellee "requiring that said Louisville & Nashville Railroad Company be restrained and enjoined from neglecting, failing, or refusing to receive, and that it (L. & N. R. R. Co.) be required and compelled to receive, bill, transport, transfer, switch and deliver in the customary way any and all live stock and other freight consigned to the Southern Railway Company in Kentucky at Louisville, Ky., at one of the points of physical connection between the tracks of said Louisville & Nashville Railroad Company and the Southern Railway Company, to plaintiff at Central Stock Yards, Kentucky, or to whomsoever consigned at said station." (Record, page 30, Volume 1).

After proof by affidavit and hearing, upon motion and submission, on November 23, 1901, the Court delivered an opinion upholding plaintiff's right to an injunction. When the opinion was delivered, and it came to preparing the order of injunction, the
1312 question was made as to whether or nay the Court meant to make the order of injunction apply to interstate shipments of stock, nothing being said on that subject in the opinion. Counsel for plaintiff prepared and tendered an order which was entered as prepared, on November 23, 1901. (Record, page 136, Volume 1). This order was construed by appellant and its counsel as not applying to interstate shipments. Subsequently, however, on December 9, 1901, (Record, page 1, Vol. 2), on motion of appellee, a rule of contempt was issued against appellant to show cause why it should not be punished for disobedience of the order of injunction; the alleged disobedience consisting of the refusal of appellant, after an interstate shipment of stock had reached Louisville, to allow the consignee to change the destination of the stock and have it delivered to the Southern Railway for the purpose of being delivered to the Central Stock Yards instead of the live stock depot of appellant in Louisville. to-wit: the Bourbon Stock Yards. The
1313 defendant most earnestly insisted that the order of injunction did not cover interstate shipments, and could not be made to cover such shipments, because they were interstate commerce and the Constitution of Kentucky could not regulate such commerce. However, on the hearing upon the rule, the response of appellant was adjudged insufficient, in a written opinion rendered by the Court (Record, page 64, Vol. 2), in which it decided every proposition in favor of the appellee, and that the Constitution of Kentucky did apply to interstate shipments, and that such application was not a regulation of interstate commerce, and that the plaintiff had a perfect right to change the destination of the stock after its arrival in Louisville, and that all this was covered by the order of injunction, and, therefore, held the appellant guilty of contempt and imposed a fine upon it.

The appellant thereupon applied to this Court for a writ of prohibition against the Judge of the Circuit Court to prohibit that Court from enforcing the fine adjudged against appellant, insisting
1314 that the order of injunction did not cover interstate shipments and that no disobedience of the injunction had been

ommitted. This Court, upon a hearing of the matter, held that he order of injunction did not cover interstate shipments, and that o disobedience to said order had been committed by appellant. (L. & N. R. R. Co. *v.* Miller, 23 Ky. Law Rep., 1714).

The appellee did not apply to the Jefferson Circuit Court to extend the order of preliminary injunction and make it cover interstate commerce, either directly or under the form of a change of destination or stoppage in transitu of the stock. However, appellee, on January 11, 1902—the day after this Court delivered its opinion granting a writ of prohibition—applied to the United States Circuit Court for the Western District of Kentucky for the desired relief as to interstate commerce. It filed a bill in equity against
1315 appellant in the United States Circuit Court for the Western District of Kentucky, on the day mentioned, in which it alleged precisely the same facts which were alleged in the petition in the State Court and prayed for the same relief, in so far as interstate shipments were concerned. The original bill based the claim for relief on the Interstate Commerce Act; but four days later, on January 15, 1902, an amended bill was filed, in which it pleaded the provisions of the Constitution of Kentucky and based its claim for relief on those provisions as well as on the Interstate Commerce Act, concluding its amended bill with the statement that "the act and conduct of the defendant complained of in its original bill are in violation of the Constitution and laws of the State of Kentucky, and it pleads and relies thereon in aid of the act of Congress of the United States, known as 'An Act to regulate Commerce.'" (Record, page 188, Vol. 2.)

Thus, exactly the same state of facts was presented to the United States Circuit Court which had been presented to the State
1316 Court herein, so far as interstate commerce was concerned; and the right to relief was based, not only on the Interstate Commerce Act, but on the Kentucky Constitution. The appellee relied for jurisdiction in its complaint in the Federal Court upon the fact of diversity of citizenship between parties (the appellee being a Delaware corporation, and the appellant a Kentucky corporation) as well as upon the federal question raised under the Interstate Commerce Act. The relief prayed for, however, was confined to interstate shipments. This matter was litigated out, so far as interstate shipments were concerned, first, in the Circuit Court of the United States for the Western District of Kentucky, which decided against appellee's contention; second, in the Circuit Court of Appeals of the United States for the Sixth Circuit, which also decided against appellee's contention; and, third, in the Supreme Court of the United States, which also decided against appellee's contention. The result of this litigation inaugurated by appellee in the Federal Court, contemporaneously with this in the State Court, being that, in each of these three tribunals, its right to the relief claimed was denied.

The Circuit Court of Appeals delivered a written opinion holding that neither upon common law principles, nor under the Interstate Commerce Act, nor by virtue of the provision of the Constitution

of Kentucky, set up by appellee, was it entitled to demand the character of service which it did demand of appellant, so far as
1317 interstate shipments were concerned; and held without construing the provisions of the Constitution of Kentucky, that if such provisions should be construed as appellee insisted and as applicable to interstate commerce, then, such provisions were void, as being an attempt by the State to regulate interstate commerce, and therefore, contrary to the Constitution of the United States. The Supreme Court waived aside the question as to whether the section of the Constitution of Kentucky relied upon was or was not invalid, as a regulation of interstate commerce, and construed the section of the Constitution for itself, and reached the opinion that the appellee was not entitled to the relief prayed for, either under the Interstate Commerce Act or the Constitution of Kentucky, as their provision fairly should be construed.

In the meantime, while the case brought by appellee was passing through the Federal Courts, the case in the State Court was prepared and was submitted in chief on April 2, 1903.

Soon after the filing of appellee's bill in the Circuit Court of the United States for the Western District of Kentucky, and before the cause was decided, to-wit: on February 13, 1902, appellant filed an amended answer in the case in the State Court, setting up as a plea in abatement, so far as interstate shipments were concerned, the pendency of the action in the Federal Court. (Record, page 112, Vol. 2). After the decision of the Circuit Court of Appeals
1318 upon the appeal of appellee from the decision of the United States Circuit Court for the Western District of Kentucky in favor of the appellant, the appellant on April 2, 1903, and before the case in the State Court was submitted in chief, rendered and moved to be allowed to file an amended answer and two exhibits (appellee's bill of complaint and the opinion of the Circuit Court of Appeals), pleading in bar the judgment and decision of the Federal Court as *res judicata*, so far as interstate shipment were concerned. The appellee objected to the filing of said amended answer, and, upon the motion's being submitted, the Court below ordered that the motion to file the amended answer and exhibits be overruled, but the amended answer and exhibits were by order of that Court made a part of the record for purposes of appeal.

Thereafter, and before the case in the State Court was decided, the Supreme Court of the United States, in an opinion and decision rendered February 23, 1904, decided the appeal of appellee from the decision of the Circuit Court of Appeals against the appellee and in favor of appellant, so far as interstate shipments were concerned; and thereupon appellant, by an additional brief filed in the State Court, called attention to this opinion of the United States Supreme Court affirming the judgment already pleaded in the last mentioned amended answer of appellant, so far as interstate shipments were concerned.

Nearly a year after the decision of the Supreme Court, the State Court decided the case, utterly disregarding the Supreme
1319 Court's decision, adhering to its own original construction, and not only perpetuated the preliminary injunction, but

extended it, so as to make it embrace (as was claimed) not only State, but interstate shipments. Thereafter, on motion of appellant, this Court suspended the injunction so far as interstate shipments were concerned.

For the convenience of the Court we here copy the amended answer which was offered to be filed, setting up the judgment of the Federal Court as a bar to appellee's action, so far as interstate shipments were concerned, and which was made a part of the record of the State Court for purposes of Appeal:

Jefferson Circuit Court, Chancery Branch, First Division.

CENTRAL STOCK YARDS CO., Plaintiff,
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.

Amended Answer.

"The defendant for further amendment to that part of its answer herein which pleaded the pendency of a suit in the United States Circuit Court for the Western District of Kentucky between the plaintiff herein, the Central Stock Yards Company, as complainant therein, and the defendant herein, the Louisville and Nashville Railroad Company as defendant therein, says that in said suit in the Federal Court the complainant therein, so far as concerns
1320 stock or shipments of stock transported, or desired to be transported from points outside of Kentucky to points within Kentucky, sought exactly the same relief as it seeks in this action, and pleaded and relied upon every ground for relief in that suit it pleads or relies in this action. A copy of the bill of complaint and amendment thereto in said Federal Court suit is filed herewith as an exhibit marked 'Bill of Complaint in the Federal Court.'

"And defendant says that since the filing of its last amended answer herein the appeal of the complainant from the judgment of said United States Circuit Court dismissing said bill of complaint has been determined by the United States Circuit Court of Appeals, and said judgment has been by said Court of Appeals affirmed for reasons given in a written opinion filed by said Court of Appeals (118 Federal Reporter, 113), and a copy of which is filed herewith as part hereof marked 'opinion of Circuit Court of Appeals' in which judgment of affirmance it was determined upon the merits of said cause that said complainant was not entitled to any part of the relief prayed for by it. Said judgment of the said United States Circuit Court of Appeals is still in force and effect, though an appeal has been taken from it to the Supreme Court of the United
1321 States, where said appeal is now pending undetermined.

"Wherefore the defendant pleads the aforesaid judgment as a bar to so much of the claim for relief in the present action as relates to stock shipped or transported, or desired to be shipped or transported from points outside of Kentucky to points within Kentucky, and prays that plaintiff's petition be dismissed."

Appended to this petition for rehearing will be found, as "Appendix A," copy of bill of complaint of appellee in the United States Circuit Court for the Western District of Kentucky; as "Appendix B," copy of amended complaint; as "Appendix C," copy of opinion of Circuit Court of Appeals, which three papers were filed in the Court below in the present action, as exhibits with and as parts of the amended answer pleading *res adjudicata*, so as to show that the exact case between these same parties under the same laws and under the same state of facts, had been therefore decided by a Court of competent jurisdiction had of appellee's own seeking. We also print as "Appendix D," copy of opinion of the Supreme Court of the United States.

It is hardly necessary for us, at this late day to go into any extended discussion of the doctrine of *res adjudicata* and the reasons therefor. As said by Brewer, Judge, (now Mr. Justice Brewer), in the case of Smith *vs.* Auld, 31 Kansas, 262:

"The whole philosophy of the doctrine of *res adjudicata* is summed up in the mere statement that a matter once decided is finally decided, and all the learning that has been bestowed and all the rules that have been laid down have been for the purpose of enforcing that one proposition."

1322 We may say, however, that probably no Court of last resort of any State in the country has more consistently adhered to the doctrine of *res adjudicata* than the Court of Appeals of Kentucky. Beginning with the earlier cases and ending with the last case we can find on the subject—Cain *vs.* Union Central Life Insurance Company, 29 Law Rep., p. 475—the Court of Appeals of Kentucky has steadfastly held to the doctrine that when a cause of action has been tried out and decided by a Court of competent jurisdiction there must be, and is, an end to the litigation between the same parties about the same cause of action. Not only has it held to the doctrine of *res adjudicata* so far as what was actually decided but has held to it so far as any matter or thing which could have been decided or should have been decided in the litigation; thus going further than most of the other Courts of last resort.

In the case of Allen's Heirs *vs.* Hall, 1 A. K. Marshall, 525, the Court, speaking through Judge Rowan, said:

"There is no doubt but that the parties to a suit, either at law or in chancery, are bound by the judgment or decree pronounced therein, and are bound thereby, (while it remains unreversed) from re-discussing, in another suit, the matters thereof; and that their privies are alike bound and barred. This principle is so intrinsically just and so obviously necessary, that it has obtained the place and character of a rule of law, with all the commentators upon, and compilers of, our laws."

1323 In the leading case of Davis, &c., *vs.* McCorkle, 14 Bush, 746, the Court said:

"With a view to the convenient dispatch of business, the speedy settlement of disputes, and the repose of society, Courts long since established the rule that when a matter is once put in issue and is passed upon by a Court of competent jurisdiction, it cannot be again

litigated between the same parties so long as the former decision continues in force."

In the case of Hayden *vs.* Boothe, 2 A. K. Marshall, 353, the Court, speaking through Chief Justice Boyle, said, after stating the facts:

"This is evidently attempting to put in issue a fact which must have been involved in and decided on the trial of the warrant for a forcible detainer. This, we apprehend, could not be regularly done. The competency of the Justice of the Peace to issue such a warrant, to hold such trial, and to render such judgment, as are alleged in the plea, cannot be disputed; and good policy, as well as the rules of law, forbid that the same points which have been once tried and decided by a competent tribunal should remain open to be litigated by the same parties. It is, accordingly, a settled rule, that a judgment of a Court of competent jurisdiction is as a plea, a bar, and, as evidence, conclusive between the same parties, upon the same matter directly in question, in the same or any other Court."

1324 In the case of Francis *vs.* Wood, 81 Ky., 16, the Court said:

"The plea of *res adjudicata* applies, except in special cases, not only points upon which the Court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward. They cannot open the litigation in respect of matters which might have been brought forward, only because, by negligence or inadvertence, they have omitted from their case. (3 Hare, 115; Davis *vs.* McCorkle, 14 Bush.)"

In the case of Honaker, &c., *vs.* Cecil, 84 Ky., 202, the Court said.

"Now the law is well settled by this Court that the judgment of a Court having jurisdiction of the subject matter and the parties is conclusive, not only as to all matters determined by it, but all incidental matters which might have been properly litigated and decided in the same suit. (See Crabb *vs.* Larkin, 9 Bush, 166; Talbott *vs.* Todd, 5 Dana, 193.)"

1325 In the case of Burnett *vs.* the Commonwealth, for the use of, &c., 21 Law Rep., 695, the Court said:

"The rule is well settled that a judgment is conclusive, not only as to all matters which are in fact litigated, but also as well to all others which the parties might have presented, and should then have presented and that a litigant cannot present part of his cause of action, and, if beaten on that, rely on the balance."

In the case of Klenke *vs.* Noonan, &c., 118 Ky., 436, the Court, after stating the facts, said:

"We will first consider the issues raised by the pleadings of Meninger as to the interest of Charles Noonan in the property. While appellants, in their reply to the cross-petition of Meninger, allege that their father, Wm. Noonan, devised all of his property of every kind to his wife, Ann Noonan, no copy of the alleged will is filed in the record, and it appears from the record of the chancery suit of Meninger vs. Klenke that Charles Noonan was adjudged to be the

owner of an undivided one-fourth interest in the house and lot in controversy in this action, and that it was sold to satisfy the claim of the appellee, Meninger, and purchased by him; that this sale was confirmed, and deed executed to the purchaser. The appellant, Lizzie Klenke, was a party to this suit, and the judgment in that
1326 case has never been appealed from, and must be held conclusive, under repeated adjudications of this Court, not only as to all matters determined by it, but as to all incidental matters which might have been properly litigated and decided therein. We therefore conclude that, as to the Meninger branch of this case, the judgment should be affirmed."

In the case of Moran *vs.* Vickery, 25 Rep., 1305, the Court said: "The rule is well settled that a judgment of a Court of competent jurisdiction upon the merits of a cause is final and conclusive between the parties in a subsequent action upon the same cause not only as to the matters actually litigated and determined in the former action, but also as to every ground of recovery or defense which might have been presented and determined therein. This rule is applied both in law and equity. Carlyle *vs.* Howse 19 Ky. Law Rep., 1242, and 24 A. & E. En. of Law, 2 edition, page 780).

"Judgment affirmed."

The Court's attention is called to the following cases holding the general doctrine that a judgment is conclusive, not only as to all matters which are in fact litigated, but also as to all other matters which the parties might have presented and should then have presented:

1327 Hall *vs.* Forman, &c., 82 Ky., 505.
McCain *vs.* Louisville & Nashville Railroad Co., 97 Ky., 804.
Bean, &c., *vs.* Meguiar, Helm & Co., 20 Rep., 885.
Home Construction Co., *vs.* Duncan, Mayor, &c., 111 Ky., 914.

An erroneous judgment has always been held sufficient as a former adjudication. It is valid and binding until reversed or set aside in some method provided by law.

Scott *vs.* Louisville Banking Co., 23 Rep., 123.
Holliday, &c., *vs.* Fields, 24 Rep., 413.

There must be an end to judicial investigation at some time, both for the purpose of relieving the parties from vexatious litigation and also to give repose to the title of property involved therein. The wisdom of this rule is based upon the experience of ages.

Small *vs.* Reeves, 25 Rep., 729.

1328 II.

It is the settled law of the land that judgments of federal courts sitting in the various States must be accorded full faith and credit by the State courts, and that where a State court refuses to give effect to a judgment of a court of the United States rendered upon a point in dispute, and with jurisdiction of the case and the parties, it denies the validity of an authority exercised under the Constitu-

on and Laws of the United States. It is equally well settled that a ght claimed under the Constitution and Laws of the United States, nd accorded to a litigant by a court of the United States, can never e taken away or impaired by a State decision refusing to give due eight to such Federal judgment properly invoked for the protection f the party in whose favor it was rendered.

In the Court below the appellant relied upon the judgment of each f the Federal Courts in which the question involved in this case, to interstate shipments, had been litigated, and claimed, and now aims, that the decision of those Courts—holding that it was not, nd could not be, required to deliver to the Southern Railway in ouisville, for delivery to the Central Stock Yards, cars which came om points without the State—was, and is, a bar to this action. his Court has recognized, in numerous decisions, the fact that judg- ents of the Federal Courts must be given full faith and credit, and followed by the State Courts.

329 In the case of Dudley *vs.* Lindsey, 9 B. Monroe, 486, the Court said:

"A judgment of a State Court has the same credit, validity and fect in every other Court within the United States, which it has in e State where it was rendered. Mills *vs.* Duryoe, (7 Cranch, 481); ampton *vs.* McConnell, (3 Wheat., 234). So that if the judgment as been rendered in a State Court, and not in the Circuit Court of e United States, it would not be regarded as a foreign judgment. nd having been recovered in the Circuit Court of the United States Mississippi, it is certainly entitled to as much effect, as if it were judgment of a Court of the State of Mississippi."

See, also, the case of Reed, &c., *vs.* Whitlow, 19 Rep., 1538, which as a case holding that the former owner of the lands in controversy, nder whom both appellant and appellee claimed title, having by roper proceedings in the United States Court sought to have the sale his property set aside upon the ground that it was his homestead, having been sold to satisfy a bond executed to the United States, nd that question having been considered by the Court and decided gainst him, he had no further title to the land and could not con- y it; and that the decision of the Federal Court, having never been odified or reversed, remained in full force and effect. It seems that an action in the United States Circuit Court the Government ob- tained a judgment against certain parties, and that execution

330 having issued thereon, W. M. Houchin became surety on each of the judgments and, the bonds not being paid, execution sued thereon, and was levied by the United States Marshal upon e property of Houchin, which was sold and bought by the Govern- ent and conveyed by deed to the Government, and afterwards sold nd conveyed to appellant, Reed. It was contended that the land ld was the homestead of Houchin at the time of the seizure and le, and that therefore no title passed, and that he sold and con- yed the same to one Hardy, and afterward Hardy conveyed the nd by deed to appellee, Whitlow. The contention of appellant, eed, who held title under purchase from the Government, was, that e land having been sold to satisfy a bond executed to the Govern-

ment, and the question of its being the homestead of Houchin having been considered in the United States Circuit Court and decided against him, that the question was *res adjudicata*, and that the State Court was precluded from deciding that the land was the homestead of Houchin, from whom Hardy purchased it, and through whom it was alleged title to appellee, Whitlow, passed. This Court held, on the appeal, as stated, that Houchin having by proper proceedings in the United States Circuit Court sought to have the sale of the property set aside on the ground that it was his homestead, and that question having been considered and decided by that Court against him, that he had no further title to the land and could not convey it, and the decision of that Court, having never been modified or reversed, remained in full force and effect and was binding upon this Court.

1331 In the case of Board of Council of the City of Frankfort *vs.* Deposit Bank of Frankfort, 111 Ky., 950, this Court recognized the doctrine which we are contending for, saying: "The same effect must be given to the judgment of a Federal Court as an estoppel as if it were a judgment of a State Court;" although this Court sought to differentiate that case from the general doctrine, and held that the judgment of the Federal Court relied on by the bank was not binding upon it. However, as will appear later in this petition, the judgment of this Court, denying the validity of the judgment of the Federal Court relied on by the bank, was reversed by the Supreme Court and reversed because of this Court's denial of the validity and binding effect of the judgment of the Federal Court.

The doctrine for which we are contending has been upheld by the Supreme Court of the United States in many cases, from the early periods of that Court down to the present day, and has become the settled law of the land.

In the early case of Dupasseur *vs.* Rocherau, 21 Wallace, page 130—where the point was made that the Louisiana Courts failed to give validity to a judgment of the United States Circuit Court for the Eastern District of Louisiana—the Court said:

"Where a State Court refuses to give effect to the judgment of a Court of the United States rendered upon the point in dispute, and with jurisdiction of the case and the parties a question is undoubtedly raised which, under the act of 1867, may be brought to this

1332 Court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right to set up. It would thus be a case arising under the laws of the United States, establishing the Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution; and it is clearly within the chart of appellate power given to this Court, over cases arising in and decided by the State Courts.

"The refusal of the Courts of one State to give effect to the decisions of the Courts of another State is an infringement of a different article of the Constitution, to-wit, the first section of the article four; and the right to bring such a case before us by writ of error

under the twenty-fifth section of the Judiciary Act, or the act of 1867, is based on the refusal of the State Court to give validity and effect to the right claimed under that article and section.

"In either case, therefore, whether the validity or due effect of a judgment of the State Court, or that of a judgment of a United States Court, is disallowed by a State Court, the Constitution and laws furnish redress by a final appeal to this Court."

In the case of Embry *vs.* Palmer, 107 U. S., page 3—where the question was the validity of a judgment of the Supreme
1333 Court of the District of Columbia, the binding effect of which had been denied by the Supreme Court of Errors of the State of Connecticut the Court said:

"The jurisdiction of the Court invoked by this writ of error is conferred by section 709, Rev. Stat., it being a case in which a title or right is claimed under an authority exercised under the United States, and the decision of the State Court being in denial of the title or right so asserted. It was decided in Dupasseur *vs.* Rocherau, 21 Wall., 130, that such a question is undoubtedly raised whenever 'a State Court refuses to give effect to the judgment of a Court of the United States rendered upon the point in dispute, and with jurisdiction of the case and of the parties.' The judgment, which is the subject-matter of the litigation, is that of the Supreme Court of the District of Columbia, which is a Court of the United States. The question which we have to determine is whether the Supreme Court of Errors of the State of Connecticut, in the decree complained of, gave to that judgment its due effect.

"Section 905, Rev. Stat., which embodies the original act of May 26, 1790, c., 11, and the supplement thereto of March 27, 1804, c., 56, provides that the records and judicial proceedings, not only of the Courts of any State, but also of any territory, or of any country subject to the jurisdiction of the United States,
1334 authenticated as therein prescribed, 'shall have such faith and credit given to them, in every Court within the United States, as they have by law or usage in the Courts of the State from which they are taken;' which, by supplying the ellipsis, must be taken to mean, such faith and credit as they are entitled to in the Courts of the State, territory, or other country subject to the jurisdiction of the United States from which they are taken.

"So far as this statutory provision relates to the effect to be given to the judicial proceedings of the States, it is founded on art. 4, sec. 1, of the Constitution, which, however, does not extend to the other cases covered by the statute. The power to prescribe what effect shall be given to the judicial proceedings of the Courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof, and which declare the supremacy of the authority of the national Government within the limits of the Constitution. As part of its general authority, the power to give effect to the judgments of its

Courts is co-extensive with its territorial jurisdiction. That
1335 the Supreme Court of the District of Columbia is a Court of the United States, results from the right of exclusive legislation over the District which the Constitution has given to Congress. Accordingly, the judgment of the Courts of the United States have invariably been recognized as upon the same footing, so far as concerns the obligation created by them, with domestic judgments of the States, wherever rendered and wherever sought to be enforced. Barney *vs.* Patterson, 6 Har. & J. (Md.), 182; Niblett *vs.* Scott, 4 La. Ann., 246; Adams *vs.* Way, 33 Conn., 419; Womack *vs.* Dearman, 7 Port, (Ala.), 513; Pepoon *vs.* Jenkins, 2 Johns. (N. Y.), Cas., 119; Williams *vs.* Wilkes, 14 Pa. St., 228; Turnbull *vs.* Payson, 95 U. S. 418; Cage's Ex'rs *vs.* Cassidy, 23 How., 109; Galpin *vs.* Page, 3 Sawyer, 93, 109."

The leading case of Crescent City Live Stock Co. *vs.* Butchers' Union Slaughter-house Co., 120 U. S., 141, was a case in which it was claimed that the Supreme Court of Louisiana failed to give due effect to a judgment of the United States Circuit Court for the Eastern District of Louisiana. It seems that at one time the Crescent Live Stock Co., under the laws of Louisiana, was invested with the sole and exclusive privilege of conducting and carrying on a live stock and slaughter-house business within the city of New Orleans and certain parishes in Louisiana. In the year 1879 a new Constitution was adopted by the people of the State of Lou-
1336 isiana; and, among other provisions of that Constitution, there were provisions which sought to take away from the Crescent Live Stock Co. the exclusive monopoly which had theretofore been given it by the laws of Louisiana by legislative enactment; and in 1880 the Butchers' Union Slaughter-house and Live Stock Landing Company became incorporated under the general laws of the State, and was proceeding to engage in the business of which the Crescent Live Stock Co. claimed a monopoly, under legislative enactment. The Crescent Live Stock Co. filed its bill in the Circuit Court of the United States for the Eastern District of Louisiana against the Butchers' Union Co., claiming its exclusive right and privilege and alleging that the Butchers' Union Co. was about to violate the same, and praying for an injunction to restrain that company from carrying out its purpose. After notice and hearing, the Judges of that Court granted the injunction as prayed for *pendenta lite,* and on final hearing the injunction was made perpetual. This judgment of the Circuit Court for the Eastern District of Louisiana was reversed by the Supreme Court, by decision reported in 111 U. S., 746, on the ground that the exclusive right granted the Crescent Live Stock Company was subject to repeal and was not protected against subsequent legislation by the Constitution of the United States. In granting the injunction referred to, the Circuit Court required the Crescent Live Stock Company to give an injunction bond, conditioned to pay the Butchers' Union Co. all
1337 damages which it might suffer or had suffered in consequence thereof. After the reversal of the judgment of the Circuit Court by the Supreme Court, the Butchers' Union Co., by a suit

brought in the Civil District Court for the Parish of Orleans against the Crescent Live Stock Co. and its surety sought a recovery for a breach of the conditions of the bond and also sought a recovery against the company alone, on the alleged ground of malicious prosecution by the Live Stock Company of the said bill in equity for an injunction. Upon the trial, the Live Stock Company relied upon the decree of the Circuit Court of the United States, granting and perpetuating the injunction, as conclusive proof of probable cause for the institution and prosecution of the suit complained of, and pleaded said decree as *res adjudicata*, and as a bar against any recovery in the suit in the Civil District of the Parish of Orleans for malicious prosecution. The State Court decided against the contention of the Live Stock Co., and held that the decree of the Circuit Court of the United States was not a bar to the prosecution of the suit for malicious prosecution. The Crescent Live Stock Co. brought the case to the Supreme Court of the United States by writ of error upon the ground that the Supreme Court of Louisiana failed to give due effect to the decision of the Federal Court. The Supreme Court reversed the Supreme Court of Louisiana and gave full force and effect to the decree of the Circuit Court of the United States, although that decree had been reversed by the Su-
338 preme Court before the commencement of the action for malicious prosecution in the Civil District Court for the Parish of Orleans.

The Supreme Court, at page 157, after discussing various points raised by counsel, said:

"However, that may be, we are of the opinion, on other grounds, that the Suprem Court of Louisiana in this case erred in not giving due effect to the decree in question of the Circuit Court of the United States. The latter is a Court co-ordinate to the Supreme Court of Louisiana in authority, and equal in dignity, being the highest Federal Court sitting in that State, whose judgments and decrees are final and conclusive, subject only to review and reversal in the Supreme Court of the United States. In the case in which the decree complained of was pronounced the Circuit Court did not act without jurisdiction, the subject-matter of the suit being a controversy arising under the Constitution of the United States. The argument of the counsel for the defendant in error to the contrary, which deduces what the Judge of the inferior Court in his charge to the jury alleged to be a usurpation of jurisdiction, merely from the fact that its decree was reversed by this Court, could only be true if the general proposition were true that all judgments reversible for error are void for want of jurisdiction. Having
339 jurisdiction of the parties and of the subject-matter of the suit, the Judges of the Circuit Court were bound to declare the law of the case between the parties in the light of their own convictions, and under a sense of their official responsibilities, not being under any legal obligation to regard the decision of the Supreme Court of Louisiana upon a question of Federal law as controlling by reason of its authority, whatever respect and deference they might see fit to accord to it by way of persuasion and argument.

And their judgment or decree when rendered is binding and perfect between the parties until reversed, without regard to any adverse opinion or judgment of any other Court of merely concurrent jurisdiction. Its integrity, its validity, and its effect are complete in all respects between all parties in every suit and in every form where it is legitimately produced as a foundation of an action, or of a defence, either by plea or in proof, as it would be in any other circumstances. While it remains in force it determines the rights of the parties between themselves, and may be carried into execution in due course of law to its full extent, furnishing a complete protection to all who act in compliance with its mandate, and even after reversal it still remains, as in the case of every other judgment or decree in like circumstances, sufficient evidence in favor of
1340 the plaintiff who instituted the suit or action in which it is rendered, when sued for a malicious prosecution, that he had probably cause for his proceeding.

"Neither was there anything in the situation or conduct of the plaintiff in error that could deprive it of the protection of the decree of the Circuit Court of the United States in this action. The fact that it has exercised an election to bring its suit against the city of New Orleans in the State Court could have no legal effect upon its right afterwards to bring a similar suit against other parties in the Circuit Court of the United States. Its right of choice was not exhausted by a single exercise, and justified it in subsequently invoking the jurisdiction of the Courts of the United States no matter with what motive or for what purpose. As we have already seen and declared, the existence of express malice, however, flagrant or unjustifiable, could not affect the exercise of this right, or deprive the party of the benefit of the judgment of the Court as proof of a probable cause for the institution of the suit. Neither was the plaintiff in error bound to reject the advice of its counsel on the ground of its own presumed knowledge of the law, as declared in the opinion of the Supreme Court of Louisiana in the prior suit.

It had a right to test the soundness of that judgment by
1341 seeking the jurisdiction of a co-ordinate Court, whose decision would be of equal authority and dignity with that of the Supreme Court of the State, both being final between the parties to the particular litigation until reversed by the Supreme Court of the United States. The plaintiff in error owed no allegiance to the Courts of the State greater than that due to the Courts of the United States; it had an equal right in both to vindicate what is claimed to be its right by remedies appropriate to that purpose, and against all parties infringing them. The fact that the Supreme Court of Louisiana had spoken first gave no additional weight to its decision. Whatever deference may be due to the decisions of the State Court of final resort in every case in which it has spoken, and whatever may be the respect to which its decisions upon questions of purely local law established as rules of property may be entitled, they are not authority binding upon the Courts of the United States, sitting even in the same State, where the questions involved and

decided relate to rights arising under the Constitution and laws of the United States."

In the case of Deposit Bank *vs.* Frankfort, on writ of error to the Court of Appeals of the State of Kentucky, 191 U. S., 499, was involved the question of the effect of a judgment of the United States Circuit Court for the District of Kentucky holding
342 that the bank was not liable for taxes for certain years and that the Hewitt Law constituted an irrevocable contract exempting the bank from taxation. That case held that a right claimed under the Federal Constitution, finally adjudicated in the Federal Courts, can never be taken away or impaired by State decisions refusing to give due weight to such Federal judgment properly invoked for the protection of the party in whose favor it was rendered. It seems that, before the judgment of the Circuit Court in favor of the bank was rendered in the Circuit Court of the United States for the District of Kentucky, this Court had held that the Hewitt Law was an irrevocable contract, and that, therefore, banks claiming under it were exempt from taxation. However, that decision of this Court so holding was afterward and before the decision in the Federal Court overruled, the Court then holding that the Hewitt Law was not an irrevocable contract, that the banks under it were not exempt from taxation. After the last decision of this Court, and after the decision in the Federal Court, suit was brought against the Deposit Bank in the State Court for taxes for several years; no claim, however, being made in that suit for taxes for the years involved in the litigation in the Circuit Court of the United States for the District of Kentucky. The bank set up and pleaded the judgment of the United States Court for the District of Kentucky as a bar to any recovery for the taxes sued upon in the State Court; and decision being had against the bank, and being affirmed by this Court (111 Ky., 950), the bank brought the case by writ of error to the
343 Supreme Court of the United States for the District of Kentucky—holding that the bank had an irrevocable contract and was exempt from taxation—was a valid and binding decree, not only for the years sued for, but for all future years. In its opinion in the case the Supreme Court said:

"It is urged that the State judgment upon which the Federal decree of 1898 is based was afterwards reversed by the highest Court of Kentucky, and, therefore, the foundation of the decree has been removed and the decree itself must fall. But is this argument sound? When a plea of *res adjudicata* is imposed based upon a former judgment between the parties, the question is not what were the reasons upon which the judgment proceeded, but what was the judgment itself, was it within the jurisdiction of the Court, between the same parties, and is it still in force and effect? The doctrine of estoppel by judgment is founded upon the proposition that all controversies and contentions involved are set at rest by a judgment or decree lawfully rendered which in its terms, embodied a settlement of the rights of the parties. It would under-

mine the foundation of the principle upon which it is based if the Court might inquire into and revise the reasons which led the Court to make the judgment. In such a case nothing would be set at rest by the decree; but the matter supposed to be finally adjudicated, and concerning which the parties had had their day in
1344 Court, could be reopened and examined, and if the reasons stated were in the judgment of the Court before which the estoppel is pleaded insufficient, a new judgment could be rendered because of these divergent views and the whole matter would be at large. In other words, nothing would be settled, and the judgment, unreversed, instead of having the effect of forever settling the rights of the parties, would be but an idle ceremony. We are unable to find reason or authority supporting the proposition that because a judgment may have been given for wrong reasons or has been subsequently reversed, that it is any the less effective as an estoppel between the parties while in force. In Crescent City Live Stock Co. *vs.* Butchers' Union Slaughter-house Co., 120 U. S., 141, the question of what effect should be given to a decision of a Court of the United States as proof of probable cause in a suit for a prosecution which was alleged to be malicious was before the Court. It appeared that the judgment relied upon had been subsequently reversed, and it was held that this made no difference unless it was shown that the judgment was obtained by means of fraud. Mr. Justice Matthews, delivering the opinion of the Court, said:

"'Its integrity, its validity, and its effect are complete in all respects between all parties in every suit and in every forum where it is legitimately produced as a foundation of an action, or
1345 of a defence, either by a plea or in proof, as it would be in any other circumstances. While it remains in force it determines the rights of the parties betwen themselves, and may be carried into execution in due course of law to its full extent, furnishing a complete protection to all who act in compliance with its mandate, and even after reversal it still remains, as in the case of every other judgment or decree in like circumstances, sufficient evidence in favor of the plaintiff who instituted the suit or action in which it is rendered, when sued for a malicious prosecution, that he had probable cause for his proceeding.'"

"'A right, question or fact distinctly put in issue and directly determined by a Court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact, once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified.' (Southern Pacific R. R. Co. *vs.* United States, 168 U. S., 1.)

"The thing established by the Federal decree relied upon here was the binding and conclusive character of the contract
1346 embodied in the Hewitt law and its acceptance. That it was such a contract was then adjudicated, and, irrespective of the

reasons given for the decision, must remain concluded until the judgment constituting such adjudication is modified or reversed.

"But it is said that the question here is simply what force and effect the State Court should give to the decree of the Federal Court relied upon. It is argued that there should be given to a Federal judgment the same force and effect that the State Court gives to a judgment of a Court of the State, in which the Federal judgment is relied upon, neither more nor less. Cases are cited from the Kentucky Court of Appeals which may be said to establish that an adjudication concerning taxes for one year cannot be pleaded as an estoppel in suits in that State involving the taxes of other years. It is true that for some purposes and within certain limits it is only required that the judgments of the Courts of the United States shall be given the same force and effect as are given the judgments of the Courts of the States wherein they are rendered; but it is equally true that whether a Federal judgment has been given due force and effect in the State Court is a Federal question reviewable by this Court, which will determine for itself whether such judgment has been given due weight or otherwise. Crescent City
1347 Live Stock Co. *vs.* Butchers' Union Slaughter Co., *supra;* Pittsburg R. R. Co. *vs.* Loan & Trust Co., 172 U. S., 493. In the latter case, Mr. Justice Harlan, after reviewing the cases upon this subject, thus states his conclusion:

"'According to these decisions and in view of the statute giving this Court authority to re-examine the final judgment of the highest Court of a State denying a right specially set up or claimed under an authority exercised under the United States, it is clear that we have jurisdiction to inquire whether due effect was accorded to the foreclosure proceedings in the Circuit Courts of the United States under which the plaintiff in error claims title to the lands and property in question.'

"When is the State Court obliged to give to the Federal judgments only the force and effect it gives to State Court judgments within its own jurisdiction? Such cases are distinctly pointed out in the opinion of Mr. Justice Bradley in Dupasseur *vs.* Rochereau, 21 Wall., 130, where the learned Justice says:

"'The only effect that can be justly claimed for the judgment in the Circuit Court of the United States, is such as would belong to judgments of the State Courts rendered under similar circumstances. Dupasseur and Co. were citizens of France, and brought the suit in the Circuit Court of the United States as such citizens;
1348 and consequently, that Court, deriving its jurisdiction solely from the citizenship of the parties, was in the exercise of jurisdiction to administer the laws of the State, and its proceedings were had in accordance with the forms and course of proceeding in the State Courts. It is apparent, therefore, that no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such case under the circumstances than is due to the judgments of the State Courts in a like case under similar circumstances.'

"The cases which, by clear inference, cannot come within this class are to be noticed.

"When it was said that no higher sanctity or effect can be given to a judgment of the Circuit Court of the United States than to State judgments, the learned Judge is careful to say 'in like cases under similar circumstances.' What are these cases? Manifestly those just stated, wherein the Court derives its jurisdiction from the citizenship of the parties and in the exercise of the jurisdiction to administer the laws of the State where the proceedings are had. Where language has been used in other cases to the effect that judgments of the Federal Courts are to be given the effect given to domestic judgments, they will be found to be cases where
1349 questions of general law are under consideration, and coming within the class suggested by Justice Bradley in the opinion quoted. Such is the case of Crescent City Live Stock Co. *vs.* Butchers' Union Slaughter-house Co., 120 U. S., 141. It was there held that a judgment of the United States Court, relied upon as a ground of probable cause in a suit for malicious prosecution, was to be given the same force and effect as judgments in the State Courts. But Mr. Justice Matthews delivering the opinion, was careful to add:

"'Whatever deference may be due to the decisions of the State Court of final resort in every case in which it has spoken, and whatever may be the respect to which its decisions upon questions of purely local law established as rules of property may be entitled, they are not authority binding upon the Courts of the United States, sitting even in the same States, where the questions involved and decided relate to rights arising under the Constitution and laws of the United States.'

"In Embry *vs.* Palmer, 107 U. S., 3, it was held that the Supreme Court of the District of Columbia is a Court of the United States and its judgments conclusive in the Courts of a State except for such cause as would be sufficient to set it aside in the Courts of the District.

1350 "Mr. Justice Matthews, who delivered the opinion, again stated the doctrine that the judgments of the Courts of the United States are upon the same footing, so far as concerns the obligation created by them, with judgments of the States. Other cases are found in the reports stating the general proposition.

"In Union & Planters' Bank *vs.* Memphis, 189 U. S., 71, the question was as to the effect to be given to a State judgment as *res adjudicata*. It was held that the Federal Courts were not required to give such domestic judgments any greater force and effect than was awarded them by the Courts of the State where rendered.

"But it is equally well settled that a right claimed under the Federal Constitution, finally adjudicated in the Federal Courts, can never be taken away or impaired by State decisions. The same reasoning which permits to the States the right of final adjudication upon purely State questions requires no less respect for the final decision of the Federal Courts of questions of national authority and jurisdiction.

"This principle is now so thoroughly settled as to need but to be

stated. It has been reiterated in a line of decisions following the great judgment of Chief Justice Marshall in Cohens *vs.* Virginia, 6 Wheat., 264, in which the principle was firmly established.

"In our judgment the adjudication of the Federal Court relied upon here, although based upon the judgment of a State
1351 Court given as a reason therefor, is equally effectual as it would have been had the Federal Court reached the conclusion, as upon the original question, that the Hewitt law constituted a binding contract between the parties. Any other conclusion strikes down the very foundation of the doctrine of *res adjudicata*, and permits the State Court to deprive a party of the benefit of its most important principle, and is a virtual abandonment of the final power of the Federal Courts to protect all who come before them relying upon rights guaranteed by the Federal Constitution and established by the judgments of the Federal Courts.

"It is true that the final determination of the Courts that the Hewitt law did not constitute a contract, and the reversal of the State Court judgment which was the basis of the decree in the Federal Court, renders this case one where a Court might wish to avoid the application of rules which may seem technical. But the protection of the right of parties as well as the interest of the public to end litigation by a final judgment, and to preserve inviolate the safeguards of the Federal Constitution, should never be overlooked in view of the hardship of particular cases. And we repeat that we are not dealing with any right of relief which the State may have in the Federal Court wherein the original decree was rendered."

1352 The record in this case shows that, so far as interstate shipments are concerned, the litigation in the State and Federal Courts was between the same parties: that the allegations of the bill in the Federal Court, and the allegations of the petition in the State Court were identical; and that absolutely the same relief was sought in each Court, even including allegations in the bill as to the demand for a "change of destination" of shipments while in transit, and a prayer for relief on that express ground. (See Appendix A). Now, we submit that the same controversy between the same parties, having been finally decided in the Federal Courts, it is now *res adjudicata* and settled.

Wherefore, we earnestly ask that the opinion heretofore delivered by this Court be withdrawn, and that the judgment of the lower Court, so far at least as interstate shipments are concerned, be reversed.

T. B. HARRISON, JR.,
Attorney for Appellant.

HELM BRUCE,
Of Counsel.

December 18th, 1906.

1353 APPENDIX A.

In the Circuit Court of the United States for the Western District of Kentucky. In Equity.

THE CENTRAL STOCK YARD CO., Plaintiff,
vs.
LOUISVILLE & NASHVILLE R. R. CO., Defendant.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Kentucky:

1. Your orator, the Central Stock Yards Company, respectfully represent to this Honorable Court that it is a duly and legally authorized and organized corporation under the laws of the State of Delaware, and as such, authorize- to contract and be contracted with, sue and be sued in said corporate name; that it is a citizen and resident of the State of Delaware; that it has in every and all respects complied with the requirements of the Constitution and laws of the State of Kentucky necessary for it to conduct its business in said State, and it brings this, its bill of complaint, against the defendant, the Louisville & Nashville Railroad Company, which it alleges is and was at the times hereinafter mentioned, and has been for many years a railroad company organized and existing under and by virtue of the laws of the State of Kentucky with power to contract and be contracted with, sue and be sued in said corporate name; that
1354 said defendant, the Louisville & Nashville Railroad Company, is a citizen and resident of the State of Kentucky.

2. That this suit is between citizens of different States, viz, the Central Stock Yards Co., a citizen of the State of Delaware, and the Louisville & Nashville Railroad Company, a citizen of the State of Kentucky, and that the amount in controversy as will be hereinafter fully shown and set forth, exceeds the sum or value of two thousand dollars exclusive of interest and costs, and that the acts hereinafter complained of and fully set forth are in violation of the Constitution and laws of the United States, and statutes thereunder, and more particularly in violation of the third section of an act of the Congress of the United States, known as "An Act to Regulate Commerce," passed February 4th, 1887, and amendments thereto.

3. Plaintiff says that it has constructed a live stock plant fully equipped with the latest improved and best facilities for, and is now engaged in, receiving, unloading, feeding, watering, caring for, weighing, having sales made of, and reloading live stock that may be consigned to it for care, attention and sale; that its stock yards are on the line of the Southern Railway Company in Kentucky, in Jefferson County, Kentucky, about nine miles from the terminus of said railway in the city of Louisville; that the said railway company in Kentucky is a duly created, organized and operating rail-
1355 way system in Kentucky under the laws of said State, and that plaintiff's said stock yards has by the Southern Railway

Company been duly and regularly established, and now is a station on the line of the said Southern Railway Company in Kentucky known as "Central Stock Yards, Kentucky," and that said Southern Railway Company has heretofore duly and regularly given notice of the establishment of said station to its agents and all connecting railways and common carriers in Kentucky. Plaintiff says that it (Central Stock Yard Company) is engaged in the stock yard business and has ample capital, premises and facilities in every way to carry on properly and economically a stock yard for the reception of shipments of stock, for the sale of same, and for feeding, watering, carrying for, and giving all proper attention thereto while in its custody. Plaintiff further says that it, with the Southern Railway Company in Kentucky, has in operation all necessary switches, tracks, platform and shutes connecting its said yard with said railway system, and has modern and of the best facilities for receiving and unloading live stock of every description, and in any quality that may be consigned to it. That said Southern Railway Company has heretofore notified all railways and common carriers including the defendant, the Louisville & Nashville Railroad Company, entering the said city of Louisville, that it, the Southern Railway Company, would be after November 1st, 1901, has ever since been and is now ready, willing, and able to accept at points of physical
1356 connection with said Louisville & Nashville Railroad Company and all other railway companies and common carriers, live stock entering the city of Louisville consigned to any and all persons at this station, Central Stock Yards, Kentucky, on its line aforesaid in Kentucky, Jefferson County, and that it would be and is now willing to be responsible from such points of connection, for the delivery of such live stock, and the collection of all charges on same, and would promptly return to such points of connection all empty cars and account for all freight charges collected in the usual way.

4. Plaintiff says that defendant, the Louisville & Nashville Railroad, is and was at the times hereinafter mentioned, and has been for many years, a railroad corporation created, organized and existing under and by virtue of the laws of the State of Kentucky, with power in its corporate name to contract and be contracted with, sue and be sued, and to conduct and operate a Steam Railroad in and through Kentucky and elsewhere, with its chief office and terminus in Louisville, Kentucky, that it is so operating and maintaining such road in Kentucky and elsewhere, in Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida, Indiana, and Illinois, and is a common carrier engaged in the transportation of passengers and property wholly by railroad along some of its lines, and partly by railroad and partly by water on other of its lines under a common control, management and arrangement for a continuous *and* ship-
1357 ment from one State of the United States to another State of the United States.

Plaintiff further says that the Southern Railway Company in Kentucky has at Louisville, Ky., at least three points of physical connection between its tracks and the tracks of the defendant, Louis-

ville & Nashville Railroad Company, which are known respectfully as the Bergen and Meehan switch or connection, the Fourth Avenue connection, and the Seventh and Magnolia Streets connection. The Bergen and Meehan Co. switch is at the intersection of the said Southern Railway Company's tracks and the tracks of the said Louisville & Nashville Railroad Co., at or near Floyd Street, or between Floyd and Brook Streets, and is about fourteen hundred and seventy-five feet in length (1475). It says that about nine hundred and seventy-five (975) feet of said Bergen and Meehan switch or siding and physical connection between tracks of said Southern Railway Company in Kentucky and the tracks of the defendant, Louisville & Nashville Railroad Company, are owned by the Southern Railway Company in Kentucky, and about five hundred (500) feet of said switch or siding and physical connection is known as the Bergen and Meehan private switch, but that the defendant, Louisville & Nashville Railroad Company, has the right to use and does use said Bergen and Meehan five hundred (500) feet of said siding or switch, and same forms a connection between the tracks of the Southern Railway Company in Kentucky and the tracks of the defendant, Louisville & Nashville Railroad Company, and is only about
1358 twenty-two hundred (2200) feet in trackage from the plaintiff's plant and the station in Jefferson County, Kentucky, on the line of the Southern Railway Company in Kentucky, known as Central Stock Yards, Ky.; that the Fourth Avenue connection is only about one hundred and twenty-eight (128) feet in length, and is about equally owned by the defendant, Louisville & Nashville Railroad Company, and the Southern Railway Company in Ky. and is about half a mile from plaintiff's plant, and the station in Jefferson County, Kentucky, on the line of the Southern Railway Company in Kentucky, known as Central Stock Yards, Kentucky; that the Seventh and Magnolai Street connection consists of a tract in length about twenty-four hundred and fifty-four (2454) feet with siding in connection therewith in *in* length about eleven hundred and seventy-two (1172) feet; that upon said main track connection and siding there can be handled about seventy-four (74) cars at one time of interchanged traffic of the one railway company or system with the other, and that said points of physical connection is only about one mile and a half from plaintiff's plant and the station in Jefferson County, Kentucky, on the line of the Southern Railway Company in Kentucky, known as Central Stock Yards, Kentucky; and that at said three points of physical connection between the tracks of the said Southern Railway and the tracks of the Louisville &
1359 Nashville Railroad Company, the said two railway systems have heretofore received and delivered, and are now receiving and delivering each one to the other, and from the other, freight other than live stock, consigned to Central Stock Yards, Ky., in carload lots and less for delivery to consignee on the track or tracks of one or the other.

6. Plaintiff says that the defendant, the Louisville & Nashville Railroad Company, is a common carrier as aforesaid of passengers and freight of all kind and descriptions, and by the Constitution

and laws of the United States, and particularly by the "Act" of the Congress of the United States approved February 4th, 1887, and known as the "Act to regulate Commerce" and especially the third section thereof, it is made unlawful for any interstate common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of the traffic in any respect whatever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever, and such carrier to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

1360 7. Plaintiff says that the Louisville & Nashville Railroad Company has announced its intention and purpose to refuse to receive, *build*, transport, switch or deliver any live stock the shipment of which originates outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between the said line and the line of the Southern Railway in Kentucky, destined to the Central Stock Yards Station, Kentucky, or to the Central Stock Yards, Kentucky, or to any such live stock consigned to any individual, partnership, firm or corporation at said Central Stock Yard, Kentucky, or at said Central Stock Yards Station, Ky., or via the Southern Railway Company in Kentucky, destined to said yard or station and that it has so instructed its agents and employés all along its lines; that in accordance with said announced intention and purpose and instructions given, it has for the last two months failed and refused and now fails and refuses to receive, *build*, transport, transfer, switch or deliver any such stock as consigned or tendered to be consigned for shipment, although during said time, from day to day live stock shipments originating out of the State of Kentucky have been tendered defendant from connecting lines and other common carriers, shippers and consigned to said Central Stock Yards, Ky., and to said Central Stock Yards Station, Ky., and to individuals, firms, corporations and partnerships at said Central Stock Yards, Ky., and at said Central Stock Yards Station, Ky., and to said Stock
1361 Yards Station via the Southern Railway Company in Kentucky.

8. Plaintiff further says that as to such interstate shipments so tendered or consigned, defendant has continuously failed and refused to receive, *build*, transport, transfer, switch or deliver same to said Southern Railway Company in Kentucky for delivery at said Central Stock Yards or Station, but on the contrary, against the known wishes and requests of the consignors, has billed all live stock shipments so tendered or consigned, to Louisville, Ky., and delivered same at the Bourbon Stock Yards in Louisville, Ky., and has failed and refused to permit the consignor and consignee

conjointly to change the destination of such shipments, when they reached the break-up yards of defendant in South Louisville, Ky., and have same switched and transferred to the Southern Railway Company in Kentucky for delivery at Central Stock Yards, Central Stock Yards Station, Ky., although so requested where the defendant knew the consignees were, and both consignor and consignee desired the delivery made, although to have thus changed the destination would have been less inconvenient or burdensome to defendant, than to have taken said shipments from its break-up yards to the Bourbon Stock Yards, which would make a difference in the haul of some five or six miles, and for which defendant would not receive any additional pay or compensation.

1362 Plaintiff further states that on December 21st, 1901, at Columbia, Tenn., a regularly established station on the Louisville & Nashville Railroad Co., Allen Bros., customers of McCampbell & Co., commission merchants and brokers doing business at the Central Stock Yards with offices located at said stock yards, tendered to the agents and employés of the Louisville & Nashville Railroad Co., at said Station at Columbia, Tenn., a carload of cattle which were loaded in L. & N. car 18726, and billed to Allen Bros., Louisville, Ky., care of Hart, McCampbell & Co., Louisville, Ky.; that before receiving and billing said carload of stock, said Allen Bros. demanded of the said Louisville & Nashville Railroad Company that said company receive, bill, transport, transfer, switch and deliver the said carload of cattle to the Southern Railway Company at Louisville, Ky., at one of the points of physical connection between the tracks of the Southern Railway Company, and the tracks of the defendant, the Louisville & Nashville R. R. Co., for delivery by the Southern Railway Company at Central Stock Yards, Central Stock Yards Station, Ky., care of Hart, McCampbell & Co., but the defendant, the Louisville & Nashville Railroad Company, neglected, failed and refused to so bill the said stock and would not bill same otherwise than as stated, that is, to said Allen Bros., care Hart, McCampbell & Co., Louisville, Ky.

Plaintiff further says that said Allen Bros., immediately upon receiving the bill of lading for said car, forwarded same to

1363 said Hart, McCampbell & Co., and wired them requesting them to demand that said carload of cattle should be stopped and unloaded at the Central Stock Yards, Central Stock Yards Station, Ky.

Plaintiff further says that upon receipt of said telegram, and acting upon the instructions of the consignor, said Hart, McCampbell & Co., consignees, did, on the 22nd day of December, 1901, before said car reached South Louisville, the break-up yards of the Louisville & Nashville Railroad Company, give written notice and requested of the agent, one J. F. Coady, the agent at said place, of the Louisville & Nashville Railroad Company, to change the destination of said car from Allen Bros., Louisville, Ky., care of Hart, McCampbell & Co., to Central Stock Yards, Central Stock Yards Station, Ky., viz., the Southern Railway Company, Louisville, Ky., but that said agent refused to change the destination of said car

as requested, and announced his purpose to and thereafter did make delivery of the said carload of cattle at the Bourbon Stock Yards and inform plaintiff that the Louisville & Nashville Railroad Company had directed him that any and all live stock that should arrive at South Louisville over the lines of the Louisville & Nashville Railroad Company, and billed to any person at Louisville, Ky., would only be delivered at the Bourbon Stock Yards, and that the said defendant would refuse to recognize the right or rights of any shipper, owner or consignee of live stock to direct any change in its destin-tion, that is as to all stock, the shipment of which
1364 originated outside of the State of Kentucky.

9. Plaintiff further says that on the 20th day of September, 1888, a contract was entered into between the Louisville & Nashville Railroad Company, first party, and the Bourbon Stock Yard Co., second party, and that by the fourth section of said contract said parties agreed and contracted with each other as follows:

"4. First party agrees that it will not lease, rent or sell any of its ground in the city of Louisville for the establishment of a stock yard or otherwise facilitate the establishment of a stock yard in the said city, and it will establish no other stock depot in said city, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the road of the first party and consigned to the city of Louisville, and should any live * * * be shipped to the other person or persons in said city, the first party hereby makes and agrees to make the stock yards of the second party the stock depot of the first party for said city, and agree to unload all live stock shipped to said city, at the address of the second party, but if the provisions of this section of this contract be abrogated or invalidated by judgment of any Court or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said expense, defend any and all litigations which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom."

1365 Plaintiff says that in order to carry out said contract on its part, the Louisville & Nashville Railroad Company has ever since the Central Stock Yards Company operated, continuously and persistently refused to receive, bill, transport, transfer, switch or deliver either intra or interstate stock coming over the lines consigned to the Central Stock Yards, Ky., or Central Stock Yards station, Ky., or to any individual, firm, or corporation at said yards or station, to the Southern Railway Company in Kentucky, for delivery at said yards or station, and that it only began to deliver such intra State stock after an injunction had been obtained in the State Court requiring it to do so, but that as to the interstate stock, it still refuses to receive, bill, transport, transfer, switch or deliver in the same as stated; that such action on the part of the defendant, the Louisville & Nashville Railroad Company, is unlawful and makes and gives an undue and unreasonable preference and advantage to the Bourbon Stock Yards Company over the Central Stock Yards Company, and is an undue and unreasonable prejudice and disad-

vantage to the *to the* Central Stock Yards, and that said action on the part of the defendant, the Louisville & Nashville Railroad Company, is had and done for said purpose, and in order to break down the said Central Stock Yards Company, and to build up and sustain the said Bourbon Stock Yards Company and for this reason alone.

Plaintiffs further says that the unlawful and unauthorized
1366 refusal of defendant to receive, bill, transport, transfer, switch and deliver said live stock so tendered or consigned, has greatly damaged the plaintiff, and is a violation of the Constitution and laws of the United States, and especially the Act to regulate commerce, passed by the Congress of the United States, and approved February 4th, 1887, and amendments thereto, and that all of said action on the part of said defendant, the Louisville & Nashville Railroad Company, is an unjust, unauthorized and unlawful discrimination against the plaintiff and unless restrained and prevented, and unless defendant is required to receive, bill, transport, transfer, switch and make delivery of said live stock as ordered by the consignor, or as, after shipment, ordered by the consignor or consignees or owners, great and irreparable injury and damage will result to plaintiff and its stock yards.

10. Plaintiff says that it has invested in its plant about $200,000, and has connected therewith a number of leading commission houses, most of whom have their offices at said plant, and are engaged in selling and purchasing, from day to day, live stock at said yards, and that a large number of customers throughout the State of Tennessee and elsewhere have expressed the purpose of doing business at said yards with said commission merchants and have endeavored to have their stock consigned to said merchants and the plaintiff, and consigned to themselves at said yards for sale by such commission houses and for care and attention and feeding
1367 by plaintiff, but that they have been prevented from doing so by the wrongful and unlawful failure and refusal of defendant, Louisville & Nashville Railroad Co., to receive, bill, transport, switch and deliver same when said stock is so tendered, and they are requested to do so, and that said defendant still refuses and fails to handle said stock otherwise than as hereinbefore stated.

Plaintiff further says that the railway system of the defendant, the Louisville & Nashville Railroad Company, extends through and over a large portion of the cattle and live stock raising sections of Tennessee and of several other Southern States, and that in order to reach the Central Stock Yards, one of the natural markets for said stock, it must necessarily pass over the lines of defendant's road, and that by reason of the wrongful and unlawful action of the said Louisville & Nashville Railroad Company, and by reason of the discrimination against plaintiff as aforesaid, all of said shippers, customers and patrons of plaintiff and of the numerous commission merchants doing business at said Central Stock Yards are required and compelled by the Louisville & Nashville Railroad Company to consign their said stock as directed by the said Louisville & Nashville Railroad Company, and to have same delivered at a stock yard other than that of plaintiff and other than the one at which such con-

signors and shippers desired said stock to be delivered; that is at the Bourbon Stock Yard Company, Ky., and that such arbi-
1368 trary, unlawful and oppressive conduct and discrimination on the part of defendant against plaintiff and the shippers and dealers in live stock along its lines, and the announced purpose and expressed intentions of defendant by written as well as by verbal instructions to its agents, and by its conduct as aforesaid, and by its declared intention to plaintiff, to continue to so fail, neglect and refuse to receive, bill, transport, transfer, switch and deliver such interstate live stock destined to the Central Stock Yards, or to deliver same to the Southern Railway at any of the points of physical connection, to be delivered by it at the Central Stock Yards, or at Central Stock Yards Station, unless immediately restrained and prevented, will cause great and irreparable injury and damage to plaintiff and its business, resulting in its disruption and destruction.

Plaintiff says that next Monday, the 13th of January, is its regular sale day, and in fact, the principal sale day of the week and that most of the dealers in live stock throughout the country at large make shipments of such stock along the lines of road over which it comes so that it may arrive at the stock yards on Saturday preceding the principal sale day on Monday, and that plaintiff has received notice and knows of a number of interstate shipments that will arrive over the lines of the Louisville & Nashville Railroad be-
tween now and Monday morning and which are desired by
1369 the shippers to be delivered to the Central Stock Yards Station, and that unless an immediate restraining order and mandatory order of injunction be granted herein without notice, requiring and compelling said defendant to so receive, bill, transport, transfer, switch and deliver such interstate stock destined to the Central Stock Yards or said station, great and irreparable injury will be done plaintiff in its business.

11. Plaintiff says it has no adequate or ample remedy at law for the injury of its business inflicted as aforesaid and threatened and complained of as hereinbefore alleged, and that if required to institute an action for damages upon each and every refusal of the defendant to receive, bill, transport, transfer, switch or deliver such interstate live stock, great delay will be occasioned to the shippers and dealers in live stock and the plaintiff in receiving the same for sale, and by the failure of the plaintiff to receive the said live stock for care and attention and feeding thereof, great damage will be done to plaintiff, and suffering inflicted upon said stock, and the business of plaintiff will be disrupted and totally ruined, and separate and distinct actions will be wholly inadequate to the injury so inflicted.

Plaintiff further says that the said failure and refusal of defendant as aforesaid to receive, bill, transport, transfer, switch or deliver the said stock has resulted in great and irreparable injury
to plaintiff's business, and that it has been damaged thereby
1370 in the sum of at least three thousand ($3,000.00) dollars and if defendant carries out its announced purpose and ex-

pressed intention to continue in such refusal, the plaintiff will be damaged in the sum of at least fifty thousand ($50,000.00) dollars.

12. Plaintiff further states that the injunction herein sought and prayed for has never been refused by this Court or any Judge of this Court, or any Circuit Judge or District Judge or Justice of this Court.

Wherefore, the plaintiff prays that the defendant, the Louisville & Nashville Railroad Company be by mandatory order of injunction immediately ordered and required to receive, bill, transport, transfer, switch and deliver all shipment of live stock tendered to it outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between its said line and the line of the Southern Railway Company in Kentucky destined to the Central Stock Yards Station, Ky., or to the Central Stock Yards, Ky., or any such live stock consigned to any individual, partnership, firm or corporation at said Central Stock Yards, Ky., or at said Central Stock Yards Station, Ky., or via the Southern Railway Company in Kentucky, destined to said yards or station, and that it also be required whenever so requested by the consignor and consignee or owner of said stock, at any of its stations,
1371 to recognize the right of said parties to change the destination of said shipment, and that it be required to change said destination and make delivery thereof at one of the points of physical connection between the tracks of said defendant's line and the tracks of the Southern Railway Company in Kentucky, for delivery by the said Southern Railway Co. at the Central Stock Yards Station, Ky., or to whomsoever there consigned and further prays that until notice is given and hearing had upon the application for an injunction, that this Honorable Court grant unto plaintiff a restraining order as herein prayed, and to be effective until this honorable Court can make decision upon the said motion for an injunction and plaintiff prays for a judgment herein against the defendant for the sum of three thousand ($3,000.00) dollars and upon final hearing, for a perpetual injunction as prayed herein, and for all such other necessary and proper relief, the premises considered.

May it please your Honors to grant unto plaintiff a writ of subpœna to be issued from the Clerk's office of this Court, directed to the said Louisville & Nashville Railroad Company and commanding it to appear herein and full and true answer made to Complainant's Bill, but not under oath, the answer under oath being waived, and your comp ainant will ever pray.

DODD & DODD AND
WM. SMITH,
Attorneys for Plaintiff.

1372 UNITED STATES OF AMERICA,
Western District of Kentucky, sct:

On this, the 11th day of January, 1902, before me, personally appeared B. H. Hurt, who says that he is the Chief Officer and President of the plaintiff, the Central Stock Yards Co., and made solemn oath that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

B. H. HURT.

Subscribed and sworn to before me by B. H. Hurt the 11th day of January, 1902.

HENRY F. CASSIN,
— U. S. Court.

1373 APPENDIX B.

In the Circuit Court of the United States for the Western District of Kentucky.

THE CENTRAL STOCK YARDS COMPANY, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Amended Bill.

And now comes the plaintiff and with leave of the Court first had and obtained, amends its bill of complaint herein as follows:

1. Your orator, the Central Stock Yards Company, respectfully represents to this Honorable Court that since the enactment by the Congress of the United States of the Act known as "An Act to Regulate Commerce," passed February 4th, 1887, and amendments thereto, the Commonwealth of Kentucky had, by Constitutional provisions and Legislative enactments, in aid of commerce, imposed certain duties upon all common carriers, and that by mandatory self-executing Constitutional requirements of the Commonwealth of Kentucky all railroad companies organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, or doing a railroad business in this State are required to receive, transfer, deliver and switch empty or loaded cars, and to move,
1374 transport, receive, load or unload all freight in carloads or less quantities coming to or going from any railroad, transfer, belt line, bridge or siding thereon with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor in any manner as to payment, transportation, handling or delivery, and that all railroad companies doing

business in this State shall so receive, deliver, transfer and transport all freight from and to any point where there is a physical connection between the tracks of said companies; and further, under the Constitution and laws of the State of Kentucky it is made lawful for any railroad, transfer, belt line or railway bridge company to make any exclusive or preferential contract or arrangement with any individual, association or corporation for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier, and that the act and conduct of the defendant complained of in its original bill are in violation of the Constitution and laws of the State of Kentucky, and it pleads and relies thereon in aid of the Act of Congress of the United States, known as "An Act to Regulate Commerce."

Wherefore, the plaintiff prays as in its original bill, and for all such other necessary and proper relief the premises considered.

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Attorney for Plaintiff.

1375 APPENDIX C.

United States Circuit Court of Appeals, Sixth Circuit.

CENTRAL STOCK YARDS COMPANY, Appellant,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Western District of Kentucky.

Submitted May 16th, 1902; Decided July 8th, 1902.

Before Lurton, Day, and Severens, Circuit Judges.

This is a bill filed by the Stock Yards Company against the railroad company seeking a mandatory injunction requiring the Railroad company to receive, transfer, transport and deliver shipments of live stock tendered to it outside the State of Kentucky, consigned or tendered to be consigned to any points of physical connection between its line and the line of the Southern Railway Company in Kentucky; and designated for the Central Stock Yards of its station in Kentucky; and in like manner to deliver, transport and transfer such consignment to any person to whom it may be billed at said stock yards; and further to recognize the right of the con-
1376 signor and the consignee to change at any of the stations of the said company, the destination of said shipment, so as to make delivery in the manner agreed upon at a point of physical connection between the lines of the Southern Railway Company and the Louisville & Nashville Railway Company for delivery to said Central Stock Yards; also seeking a temporary injunction and damages in the sum of three thousand dollars.

The Central Stock Yards Company is a duly organized corporation authorized to conduct a general business in the State of Kentucky. The Louisville & Nashville Railroad Company operates in the States of Kentucky, Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida, Indiana and Illinois, as a common carrier. The Central Stock Yards Co. has located its plant just outside the city of Louisville, where it has facilities for receiving, unloading, feeding and caring for live stock. This plant is about nine miles from the terminus of the Southern Railroad in the city of Louisville. It is further alleged that the Southern Railway Company has established a station, known as the "Central Stock Yards," at or near the location of the plant. The situation may be shown in a general way by the rough draft herein shown:

In the original transcript diagram was here inserted.

The points of physical connection between the lines of the Southern Railway Company and the lines of the defendant are
1377 shown at F, B and C of the diagram. The defendant company refused to receive stock from points outside the State of Kentucky, billed to the Central Stock Yards Company or to any person in its care, asserting the right to deliver all live stock designated for Louisville passing over its own lines, at the Bourbon Stock Yards, shown on the map at H, with which company the defendant has a contract, the Louisville & Nashville Railroad Company agreeing that it would not lease, rent or sell within the city of Louisville for the establishment of any other stock yards or establish any other stock yards within or adjacent to said city. That it will deliver, and cause to be delivered, so far as it legally may, all live stock shipped over the lines of the defendant company consigned to the city of Louisville; and will load all stock for other persons at said city at said yards, providing that if the terms of such agreement should be invalidated by any judgment or order of the Court, or by legislative requirement, then the stock yards company should have no claim for damages against the railroad company arising out of the terms of the contract.

The Central Stock Yards Company is a corporation, and was established by an agreement with the Southern Railway Company making it the stock yards of that company in Louisville and vicinity. It is claimed that the complainant has a right to compel the shipment of live stock and transfer of cars consigned to the Central
1378 Stock Yards Company at one of the points of physical connection with the Southern Railway upon three grounds:

1. That such is the legal duty of the defendant company as a common carrier.

2. Because of the requirements of the Act to regulate commerce, passed by the Congress of the United States on February 4th, 1887, and known as the "Interstate Commerce Act."

3. By amended bill, that such is the duty of the corporation under the Constitution and laws of the State of Kentucky.

The Circuit Court dismissed the application for a temporary injunction, and afterwards dismissed the bill for want of jurisdiction in equity. Complainant's appeal.

DAY, J., delivered the opinion of the Court.

The discussion in this case has taken a wide range. In our opinion it may be disposed in the solution of a few leading propositions, the first being, is there a right independent of a statute, to require the railroad company to receive the live stock for shipment to the Central Stock Yards Company and to deliver the cars at a point of connection with the Southern Railroad in Louisville for transportation thereto.

It is apparent from a consideration of the testimony that the Central Stock Yards Company is primarily the stock yards of the Southern Railway Company. It is true the location is just beyond the city limits, but the business to be transacted is the Louisville business in the sale and forwarding of stock in these yards.

1379 The contract through which the Central Stock Yards originated is in the record, and there we find an agreement between the Southern Railway Company and the Central Stock Yards Company in which is cited the desire of the railroad company to establish a general stock depot "for the receiving and delivery of stock at Louisville, Kentucky." After stipulations as to the reception and care of the stock, it is further provided that the railroad company will establish the premises of the stock yards company as a stock depot for the purpose of handling live stock to and from Louisville, and agrees not to sell, lease or use or license to be used any part of its ground in or adjacent to Louisville for the establishment of any other stock yards, in or otherwise facilitate the establishment of any other stock yards in the city, and will establish no other yards dept at or near said city. The railroad company further agrees to establish Louisville rates to and from the premises of the said company on certain lines. It is apparent from these stipulations of the contract that the parties understood that the Central Stock Yards was intended to be, as in fact it is, a Louisville stock yards, to be used, as is recited in the contract, in building up the live stock business to and from Louisville. We have no question that the Central Stock Yards is as distinctly a yard for the transaction of the business of receiving, keeping and selling of stock at Louisville as is the Bourbon Stock Yards, established for the same pur-

1380 pose by contract with the defendant company. The question on this branch of the case is thus narrowed to the consideration of the rights of the complainant to require of the Louisville & Nashville Railway Company shipments and transfers to the Central Stock Yards Company over the connection with the Southern Railway, of live stock whose destination is Louisville. The peculiar duties of a common carrier of live stock are pointed out by Mr. Justice Field in North Penn. R. R. Co. *vs.* Commercial Bank of Chicago, 123 U. S., 727. The animals cannot be turned loose or left without food or shelter in cars standing on the railroad tracks or sidings. They must be placed in suitable quarters where they can be fed and cared for under the charge of competent agents. The nature of the property requires these services, essential to the discharge of the duty of the carrier in the safe transportation and delivery of live stock. For this purpose it is the duty of the carrier to

make provision by suitable yards and proper equipment and competent persons to manage and control the care and delivery of the live stock. We perceive no reason why this duty cannot be discharged by contract with proper persons or companies who shall undertake the same under the responsibility of the carrier. Such a contract was enforced in Terre Haute, R. R. Co. *vs.* Struber, 109 U. S.,
1381 381. Justice Harlan observed in Stock Yards Company *vs.* Keith, 139, U. S., 128-36:

"It did not concern them (the complainants) whether the railroad company duly maintained stock yards or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under the obligation to the public to provide."

There is no showing of the inadequacy of the Bourbon Stock Yards Company in the matter of accommodations for receiving and caring for cattle. The defendant has there made provisions ample for the care of such stock with the company obligated to discharge the duties in this behalf required by the law of common carriers. Is the defendant obliged by law to make Louisville delivery at other points by making connections for other Louisville stock yards? We think this question must be answered in the negative. To all intents it was so answered by this Court in Butchers' and Drovers' Stock Yards Company *vs.* Louisville & Nashville Railroad Company, 67 Federal, 35. In that case the railroad company had entered into a contract with the Union Stock Yards Company which made it the stock yards depot of the Louisville and Nashville Railway Company at Nashville. A spur track had been run down Front street in Nashville for the accommodation of freight shippers not handling live stock. About forty feet from this track the Butchers' and Drovers' Company established an independent stock yards. The Butchers' and Drovers' Company sought a mandatory injunction to
1382 compel the railroad company to build or allow to be built, a side track connecting the spur track with complainant's stock yards, there to deliver and receive cattle consigned or shipped by the complainant. The obtaining of the right of way and the expense of building the side track were not required of the defendant company and are not elements essential to the disposition of the case in the opinion rendered by Judge Taft. The contention of the railroad company, that, having established a live stock depot in Nashville, for the reception and delivery of stock in that city, it could not be compelled to receive and deliver from another depot in the city, was sustained. Judge Taft quotes from the opinion of Judge Harlan in Stock Yards Company *vs.* Keith, 139 U. S., 128, as follows:

"We must not be understood as holding that the railroad company in this case was under any legal obligation to furnish, or cause to be furnished, suitable and convenient appliances for receiving and delivering live stock at every point on its line in the city of Covington where persons engaged in buying, selling or shipping live stock choose to establish yards. In respect to the mere loading and unloading of live stock, it is only required by the nature of its employment

to furnish such facilities as are reasonably sufficient for the business at that city. So far as the record discloses, the yards maintained by the appellant are, for the purposes just stated, equal to all
1383 the needs, at that city, of shippers and consignors of live stock, and, if the appellee had been permitted to use them without extra charge for mere 'yardage,' they would have been without just grounds of complaint in that regard, for it did not concern them whether the railroad company itself maintained stock yards, or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under obligation to the public to furnish. But as the appellant did not accord to appellee the privilege they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stock yard of its own for shippers and consignees, the Court below did not err in requiring the railroad company and the receivers to receive and to deliver live stock from and to the appellees at their stock yards in the immediate vicinity of the appellant's yards, when the former were put in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish. It was not within the power of the railroad company, by such agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

1384 We think this language no less applicable to the case under consideration. The Louisville & Nashville Railroad Company has by contract arranged for the discharge of its duties to shippers of live stock at the Bourbon Stock Yards. The proof does not show that these accommodations are inadequate or the charges illegal. It would doubtless be convenient and promote the business of dealers and shippers if other facilities were afforded, but we find in the law, nothing aside from a positive statute, that requires more ample provision at the hands of the respondent.

It is further alleged in the bill that the refusal to make the desired shipping and transfer of stock to the yards of the complainant is a violation of section three of the Interstate Commerce Act, which provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give undue or unreasonable preference or advantage to any particular person, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable,
1385 proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their respective lines, and those connecting therewith and shall not discrimi-

nate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The claim is that, having granted certain rights and privileges to the Bourbon Stock Yards Company, this section guarantees equal privileges to the Central Stock Yards Company. This construction of the act is not sustainable. It is the duty of the railroad company to provide reasonable facilities for the unloading and care of live stock. This duty it might discharge by itself furnishing sufficient facilities, or it might contract with others to make such provision. The respondent has chosen the latter course. By contract with the Bourbon Stock Yards Company it has provided facilities for the care of stock received at Louisville. These facilities cannot be denied to some and afforded to others. But this is far from saying that it was the purpose of the law to dictate to common carriers the means by which it shall discharge its obligations to shippers. To hold otherwise would be, having regard to the present case, to require the railroad company to make connections
1386 with as many stock yards companies as may see fit to provide facilities equal to those furnished by the company or its agents. This would be carrying the act far beyond its terms and purposes. Kentucky and I. Bridge Co. *vs.* Louisville & N. R. R., 37 Federal, 621.

These considerations dispose of this branch of the case. If it could be regarded as one involving the right to require one railroad to interchange traffic with another, the position of the complainant would be equally untenable. At common law a railroad company is only bound to transport freight to its own terminus. The rule is thus stated in A. T. and S. F. R. R. *vs.* Denver N. O. R. R. Co., 110 U. S., 41:

"At common law a carrier is not bound to carry except on its own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of any statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of his contract, and if he holds himself out as a carrier beyond his line, so that he may be required to carry for all alike he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the half of others, than he would occupy of the means of
1387 transportation employed were all his own. He certainly may select his own agencies and his own associate for doing his own work."

It is averred in the bill that the Southern Railway Company has notified the respondent that it would be and now is willing to be responsible for points of physical connection with the Louisville & Nashville Railroad for the delivery of such live stock and the collection of all charges on the same and would promptly return to such points of connection all empty cars, and would account for

all freight charges collected in the usual way. This may be t
and would possibly be a reasonable arrangement. But have
Courts the right in the absence of statute, to dictate to carriers
contracts they shall make in the inter-change of traffic, and to
quire such to be carried out as the Courts may deem reasonable?
billing and transfer of freight from outside points over the two r
roads is a matter of arrangement between them. The proportion
the joint tariff each shall receive, the handling of cars, the
bility of one to the other and other matters are to be determi
by the contract between the parties. Each controls its own railr
and may determine for itself upon what terms it will unite in a j
tariff. No arrangement exists with the Southern Railroad for
transportation and delivery of cars of live stock to the Cen
1388 Stock Yards, if that can be assumed to be a station on
line of the Southern Railroad, nor do we think a Cour
Equity has the power to make one and supervise its execution,
has this right been conferred upon the Courts by the Inter
Commerce Act. This doctrine is so thoroughly established a
require no more than the citation of the authorities in support o
A. T. & S. Railway Company *vs.* D. N. O. Railroad, 110 U. S., 6
Espress Cases, 117 U. S., 1; Pullman Palace Car Company *vs.*
souri Pac. Ry. Co., 115 U. S., 587; N. Pac. Railroad *vs.* Dustin,
U. S., 492; Kentucky & I. Bridge Co. *vs.* Louisville & Nash
R. R., 37 Fed., 567; L. & N. R. R. Co. *vs.* St. L. M. R. R., 41 F
559; Oregon Short Line Co. *vs.* N. P. R. R., 51 Fed., 475; St
Drayage Co. *vs.* L. & N. R. R., 65 Fed., 38; Allen & Lewis *vs.*
gon R. & Nav. Co., 98 Fed., 16.

It is further alleged that the duty of complying with the
plainant's demand rests upon the defendant company, because of
requirements of the Constitution of the State of Kentucky and
laws passed in pursuance thereof. Assuming, without decid
that the Kentucky Constitution and Legislature require the def
ant company to receive, deliver, transport and transfer freight to
point that is in physical connection with the tracks of another
pany, so that the complainant has, as to traffic originating in
tucky, the right to require that the shipment be received and t
ported in accordance with the prayer of the bill, the ques
1389 remains, have the Kentucky Constitution and the stat
any operations beyond the limits of that State? The I
state Commerce clause of the Federal Constitution has given ris
much litigation and frequent construction by the Supreme C
It is thoroughly settled *with* the power of Congress to regulate
merce is plenary, and no State has the right to regulate purely i
state commerce. On the other hand, the State has the right to
provisions as to matters within its own boundaries intended as
to commerce, not thereby regulating interstate traffic. Wit
undertaking to reconcile or consider the numerous decisions we
refer to the County of Missouri *vs.* Kimball, 102 U. S., 691.
Justice Field, with his usual clearness, has called attention to
sound rules of construction to determine what is and what is
within the power of the State:

"Perhaps some of the divergence of views upon this question among former Judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined, and its local aids or instruments or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.

For the regulation of commerce as thus defined there can be
1390 only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adapt such a system. Acting upon it by separate States is not, therefore, permissible." (Page 702.)

It is within the power of a State to require connecting tracks between two railroad companies at an intersection for the transfer of cars used in the local business of such lines of railroad. This may have been necessary for the accommodation of State commerce. Railroad Co. *vs.* Jacobson, 179 U. S., 287. So it is competent for a State to require a railroad company to stop a certain number of trains each day at stations having a certain number of inhabitants, within the State. Such regulations do not interfere with the delivery or transportation of passengers traveling between States in such wise as to be regulations affecting interstate traffic. The statute simply amounted to requiring three trains of the company to stop at the stations named each day. Lake Shore *vs.* Ohio, 173 U. S., 123. Likewise a State may require a telegraph company to deliver a message. Western Union *vs.* McJames, 162 U. S., 650.

But it is thoroughly well settled that a State may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the States.

In the case at bar, we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is
1391 aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction it would follow it could regulate interstate commerce. This it cannot do.

We reach the conclusion that no case was made in the bill justifying the relief prayed for, and that there was no error committed dismissing the bill.

Judgment affirmed.

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1392 APPENDIX D.

CENTRAL STOCK YARDS COMPANY
vs.
LOUISVILLE & NASHVILLE RAILWAY COMPANY.

Appeal from the Circuit Court of Appeals for the Sixth Circuit.

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court of Appeals affirming a decree of the Circuit Court which dismissed the plaintiff's bill. 118 Fed. Rep., 113. The bill was brought by the appellant, a Delaware corporation, against a Kentucky corporation, to compel it to receive live stock tendered to it outside the State of Kentucky for the Central Stock Yards Station, and to deliver the same at a point of physical connection between its road and the Southern Railway, for ultimate delivery to or at the Central Stock Yards. The Central Stock Yards Station is at the Central Stock Yards, just outside the boundary line of Louisville, Kentucky, on the Southern Railway Company's line, and by agreement between the two companies the Central Stock Yards are the "live stock depot for the purpose of handling live stock to and from Louisville" on the Southern Railway. The defendant, by a similar arrangement, has made the Bourbon Stock Yards its live stock depot for Louisville, and declines to receive live stock billed to the Central Stock
1393 Yards, or to deliver live stock destined to Louisville elsewhere than at the Bourbon yards. There are physical connections between the Louisville & Nashville and the Southern tracks at a point between the two stock yards, which is passed by the greater portion of the live stock carried by the Louisville & Nashville Company, and at another point which would be more convenient for delivery a little further to the northward. The details are unimportant, except that in order to deliver, as prayed, the defendant would be compelled either to build chutes or to hand over its cars to the Southern Railroad, after having made some contract for their return. The right is claimed by the plaintiff, under the Interstate Commerce Act of February 4, 1887, c. 104, section 3, 24 Stat. 379, making it unlawful for common carriers subject to the act to give unreasonable preferences; and requiring them to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of property to and from their several lines and those connecting therewith. The right is claimed also under the Constitution of Kentucky, especially section 213, requiring Kentucky railroad companies to receive, transfer and transport freight from and to any point where there is a physical connection between the tracks, as we understand it, of the railroad concerned and any other.

For the purpose of decision we assume, without expressing
1394 an opinion, that if the Act of Congress and the Kentucky Constitution apply to the case they both confer rights upon

the plaintiff. As to the former compare Sections 8, 9, and the act of February 19, 1903, c. 708, Section 2, 32 Stat. 847, 848, Covington Stock Yards Co. *vs.* Keith, 139 U. S., 128; Kentucky & Indiana Bridge Co. *vs.* Louisville & Nashville R. R., 37 Fed., 567, 610, 620. The rights under the latter, which are relied upon especially, could not be established without discussion. Compare Atkinson *vs.* Newcastle, &c., Waterworks Co., L. R., 2, Ex. Div., 441; Johnston *vs.* Consumers' Gas Company of Toronto (1898), A. C. 447. For the same purpose we further assume that such rights as the plaintiff has may be enforced by bill in equity. See Interstate Stock Yards Co. *vs.* Indianapolis Union Railway, 99 Fed. Rep., 472. We also lay on one side the question whether the section of the Constitution of Kentucky is or is not invalid as an attempt to regulate commerce among the States. For we are of the opinion that the defendant's conduct is not within the prohibitions or requirements of either the Act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed.

The Bourbon Stock Yards are the defendant's depot. They are its depot none the less that they are so by contract and not so by virtue of a title in fee. Unless a preference of its own depot to that of another road is forbidden, the defendant is not within the Act of Congress. Suppose that the Southern Railway Station
1395 and the Louisville & Nashville Station were side by side, and that their tracks were connected within or just outside the limits of the station grounds. It could not be said that the defendant was giving an undue or unreasonable preference to itself or subjecting its neighbor to an undue or unreasonable disadvantage if it insisted on delivering live stock which it had carried to the end of the transit at its own yards. These views are sanctioned by what was said in Covington Stock Yards Co. *vs.* Keith, 139 U. S., 128. The fact that the plaintiff's stock yards are public does not change the case. See further Butchers' & Drovers' Stock Yards Co. *vs.* Louisville & Nashville R. R., 67 Fed. Rep., 35.

If the cattle are to be unloaded, then, as was said in Covington Stock Yards Company *vs.* Keith, the defendant has a right to unload them where its appliances for unloading are, and cannot be required to establish another set hard by. On the other hand, if the cattle are to remain in the defendant's cars it cannot be required to hand those cars over to another railroad without a contract, and the Courts have no authority to dictate a contract to the defendant or to require it to make one. Atchison, Topeka & Santa Fe R. R. *vs.* Denver & New Orleans R. R., 110 U. S., 667, 680. The concensus of the Circuit Courts is to the same effect. Kentucky & Indiana Bridge Co. *vs.* Louisville & Nashville R. R., 37 Fed. Rep., 567, 629, 630; Little Rock & Memphis R. R. *vs.* St. Louis, Iron Mountain & Southern Ry., 41 Fed. Rep., 559; Chicago & Northwestern Ry. *vs.* Osborne, 52 Fed. Rep., 912; Oregon Short Line & Utah North-
1396 ern Ry. *vs.* Northern Pacific R. R., 61 Fed. Rep., 158, affirming S. C., 51, Fed. Rep., 465; Little Rock & Memphis R. R. *vs.* St. Louis Southwestern Ry., 63 Fed. Rep., 775; St. Louis Drayage Co. *vs.* Louisville & Nashville R. R., 65 Fed. Rep., 39; Allen *vs.*

Oregon R. R. & Navigation Co., 98 Fed. Rep., 16. All that was decided in Wisconsin, Minnesota & Pacific R. R. *vs.* Jacobson, 179 U. S., 287, was that by statute two railroad companies might be required to make track connections. So much of the statute as undertook to regulate rates was not passed upon. See Minneapolis & St. Louis R. R. *vs.* Minnesota, 186 U. S., 257, 263. There is no act of Congress that attempts to give Courts the power to require contracts to be made in a case like this.

What we have said applies, in our opinion, to the Constitution of Kentucky, with little additional argument. The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies, must be taken to refer to cases where the freight is destined to some further point by transportation over a connecting line. It cannot be intended to sanction the snatching of the freight from the transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether under any interpretation it can be sustained. In
1397 view of the course taken by the argument we may add that we do not find a requirement that the railroad company shall deliver its own cars to another road. The earlier part of the section 213 provides that all railroads "shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in carloads or less quantities, coming to or going from any railroad, * * * with equal promptness and dispatch, and without any discrimination. * * * Promptness and the absence of discrimination are the point, and that shows that the words "coming to or going from any railroad," qualify the words "empty or loaded cars" as well as "freight," and therefore that the cars referred to are cars from other roads. The same thing is shown by the word "receive," which is the starting point of all that relates to cars. See Louisville & Nashville R. R. *vs.* Commonwealth, 108 Kentucky, 628, 633. The other sections of the Constitution need no special remark.

We have discussed the case as if the two stock yards were side by side. They were not, but they both were points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which carriage to another station in the same city by another road might be regarded as *bona fide* further transportation over a connecting road and within the requirements of the
1398 Kentucky Constitution. However that may be, we are of the opinion that the Court below was entirely right, so far as appears, in treating this as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side. As the defendant would not be bound to deliver at the Central Stock Yards if they were by the side of its track, its obligation is no greater because of the intervention of a short piece of the track of another railroad. As we have

said, the delivery would have to be made either by unloading or by the surrender of the defendant's cars.

Decree affirmed.

Mr. Justice McKenna concurs in the result.

1399 The reply to the petition for rehearing mentioned in the above order is as follows:

1400 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Response to Petition for Rehearing.

The petition for a rehearing filed herein is nominally seventy-four printed pages in length, but in reality it is considerably less than one-half that number, inasmuch, as more than one-half of the said petition for a re-hearing consists of printed copies of parts of the record that were considered by this Court in its determination of the action.

The petition for re-hearing on its face is addressed to two points.

First, it is contended that this case as to interstate shipments, having been presented to the Federal Courts by appellee and in those Courts decided in favor of appellant, is now *res adjudicata* 1401 and settled.

Second, that the opinion of this Court disregards a well settled principle of law to the effect that judgments of Federal Courts must be accorded full faith and credit, and that by the opinion herein full faith and credit has not been given to the judgment of the Federal Courts between the parties hereto.

I.

Res Adjudicata.

Counsel for appellant misconceives the opinion of this Court in assuming that it did not consider the question of *res adjudicata*.

The opinion of this Court fully considered the Federal Court decisions as found in the cases of Central Stock Yards Co. *vs.* L. & N. R. R. Co., 192 U. S., 568; Same *vs.* Same, 118 Fed. Rep., 113 and together therewith the cases of Covington Stock Yards *vs.* Keith, 139 U. S., 128; Butchers & Drovers Stock Yards Co. *vs.* L. & N. R. R. Co., 67 Fed. Rep., 35, and by this Court it was determined that *they* were purely stock yard cases, decided upon supposed common law principles, without respect to Section 213 of our State 1402 Constitution and that by reason thereof, they could not be accepted as authority as to its true meaning. (See opinion, pp. 17 to 29).

It is the universal law, and is conceded to be such in the dissenting opinion of this Court, upon which the petition for a re-hearing is based, "that this Court is not bound by the construction of the Supreme Court of the United States of our Constitution or statutes," and further "that after this Court has construed our Constitution or statutes the Supreme Court, for the purpose of any federal question which may arise thereon, will adopt the construction of this Court." (See dissenting opinion, page 79).

Notwithstanding this concession, which is confessedly the law, it is seriously argued (1) that the decision of the Supreme Court of the United States between the parties hereto as to interstate commerce is *res adjudicata* on this Court as to any construction it may place upon the Constitution and statutes of Kentucky; (2) That because the Supreme Court of the United States has construed the Interstate Commerce Act respecting the rights of the parties,
1403 litigant hereto, as to interstate livestock, that such construction of the Interstate Commerce Act defining the rights of the parties exclusively as to interstate commerce that *a fortiori* same limits and inhibits this Court from construing its own Constitution and statutes, and further that the failure of this Court to adopt the Supreme Court's opinion as to interstate traffic (same being solely applicable to intra-state traffic) results in a failure of this Court to give full faith and credit to the Federal Court decisions.

Upon the face of the petition for re-hearing, as before stated, it is made plainly to appear that it is addressed only to the opinion in so far as it may affect interstate shipments. The opinion of this Court in no manner attempts to affect interstate shipments of livestock, and, therefore, there can be no foundation for the theory that the opinion disturbs, in the slightest extent, the final decree of the Federal Court, or to any extent affects the right of the appellant under said decree as between the parties litigant thereto.

1404 The judgment, affirmed by the decree herein, in no manner affects the rights of the parties hereto as determined in the Federal litigation referred to, and in no manner attempts to regulate the duties of the appellant outside of Kentucky, and when this must necessarily, be taken as a conceded fact, it is difficult to understand how the principle of *res adjudicata* can have any application to this case whatsoever.

It is true, as was said by Brewer, Judge (now Mr. Justice Brewer) in the case of Smith *vs.* Auld, 31 Kas., 262:

"The whole philosophy of the doctrine of *res adjudicata* is summed up in the mere statement that a matter once decided is finally decided, and all the learning that has been bestowed, and all the rules that have been laid down, have been for the purpose of enforcing that one proposition."

We subscribe to this definition of the meaning of *res adjudicata*, but say, in confidence, that all the authorities will show that a matter once decided in order to be finally decided must be by a Court with authority to finally decide and possessing jurisdiction
1405 to decide the questions at issue between the parties.

The question at issue between the parties hereto, in the

federal litigation had, was only as to interstate shipments of live-stock. Even if it should be conceded that an intimation was to be found in the opinions of the Federal Courts, having these matters before it, that they conceived a different meaning to the Constitution and statutes of this States from that given by the opinion herein, it is unquestionably the law *that this Court, and this Court alone, has the right to finally construe its Constitution and statutes,* and that such construction of its Constitution and statutes as it may give thereto is binding upon the Supreme Court of the United States, even though it may have theretofore given to the Constitution and statutes of this State a different construction, and accepting this well established principle of law, that is demonstrable from the authorities, it follows that there cannot possibly be anything in the nature of *res adjudicata* in the decisions of the Federal Courts as binding upon this Court in this particular litigation.

1406 When it is admitted "that this Court is not bound by the construction of the Supreme Court of the United States of our Constitution or statutes," and when it is made clearly to appear from the opinion of this Court that it has not attempted to interfere with the decree of the Federal Courts as to interstate shipments of live-stock, it seems to us to be without reason to contend that the Federal Court decisions are binding, as *res adjudicata,* upon this Court.

This Court in its opinion, after an elaborate review of the authorities, on pages 73 and 74, says:

"The conclusion deducible from the foregoing authorities is, that section 213 of the Kentucky Constitution, requiring interchange and switching of cars, is a valid exercise of the police power of the state; that it is not intended to affect interstate commerce, and that such effect as it may have thereon is purely incidental and indirect, and this being true, it is not to be regarded as a regulation of interstate commerce within the meaning of the Federal Constitution, or Interstate Commerce."

1407 In the case of Fairfield *vs.* County of Gallatin, 100 U. S. pp., 47 to 55, it appeared that the Constitution of the State of Illinois was first construed by the Supreme Court of the United States, and afterwards the Supreme Court of the State of Illinois construed its own Constitution differently from the Supreme Court of the United States, and the question was thereupon, for the second time, presented to the Supreme Court of the United States as to whether or not it, the Supreme Court of the United States, would follow its own interpretation of the Constitution of Illinois, or accept the construction of the said Constitution as placed thereon by the Supreme Court of the State of Illinois, and in an elaborate opinion by Mr. Justice Strong the conclusion was reached that the Supreme Court was bound to adopt and follow the construction of the Constitution of the State of Illinois as placed thereon by the Supreme Court of Illinois.

In the course of the Opinion in the Fairfield case it was said, *"we are aware that it is the peculiar province of the Supreme Court of a State to interpret its organic law, as well as its statutes, and*

1408 *that it is the duty, as well as the pleasure of this Court, to follow and adopt that Court's interpretation."*

The only exception to this general rule requiring the Supreme Court of the United States to adopt the construction placed upon the Constitution or statutes of a State given thereto by its Court of last resort is, that where the Supreme Court of the United States construes the Constitution or statutes of a State prior to any construction placed thereon by the Supreme Court of that State, and where contracts in accordance with such construction as placed thereon by the Supreme Court of the United States are entered into, that a subsequent and different construction of the Constitution by the State Court from that of the Supreme Court will not be given a retroactive effect and allow such subsequent State construction to invalidate contracts entered into in good faith in pursuance of the construction so placed upon such Constitution or statutes by the Supreme Court.

A striking illustration of this exception is afforded by
1409 reference to the case of Rowan *vs.* Runnels, 5 How., 134.

In Green *vs.* Neal's Lessee, (6 Pet. 291), the question raised was whether the Court would adhere to its own decision in the construction of a constitutional or statutory provision of a State, or would recede from it and follow the decision of the State Court.

The Supreme Court of the United States in reviewing that decision in the case of Fairfield *vs.* County of Gallatin, *supra*, said:

"And it has been held that this Court will abandon its former decision construing a State statute, if the State courts have subsequently given to it a different construction. In Green *v.* Neal Lessee (6 Pet. 291), the question raised was whether the Court would adhere to its own decision in such a case, or would recede from it and follow the decisions of the State court. In two previous cases a certain construction had been given to a statute of Tennessee in supposed harmony with decisions of the State Court. But subsequently it was
decided otherwise by the State Supreme Court; and it ap-
1410 peared that the decisions upon which this court had relied were made under peculiar circumstances, and were never in the State considered as fully settling the construction of the act. This court, therefore, overruled its former two decisions, and followed the later construction adopted by the State Court. See also Suydam *vs.* Williamson, 24 How. 427."

If this Court has accessible Rose's Notes to the Supreme Court Reports, and will examine the same under the cases of

Fairfield *vs.* County of Gallatin, 100 U. S., 47,
Green *vs.* Neal's Lessee, 6 Pet., 291, and
Suydam *vs.* Williamson, 24 How., 427,

the authorities in accord with these cases will be found unbroken and numerous.

We have in Sections 213, 214 and 215 of the Constitution police regulations that "involve the public convenience," and questions of public policy as affecting the liability for acts done or omitted to be done by railroads or quasi public corporations.

We are told that because the Supreme Court of the United States
in litigation had between the parties hereto, has determined
1411 the rights of the said parties as to interstate commerce, therefore, such determination is conclusive upon this Court as to

intra-state commerce, and the construction of its Constitution and statutes.

Questions of public policy, as affecting the liability for acts done, or omitted to be done by a quasi public or railroad corporation within one of the States of the Union, although not controlled by the Constitution, laws or treaties of the United States, or by the principles of commercial or mercantile law, or of general jurisprudence of national or universal application, must, of necessity, be determined and governed by the law of the State as expressed in its own Constitution, and declared by its highest Court.

See Hartford Insurance Co. *vs.* Chicago &c. Ry. Co. 175 U. S., page 100, and numerous authorities therein cited.

The validity of the provisions of our State Constitution, construed in the opinion herein, do not depend upon the Constitution, laws or treaties of the United States, or upon any general principle of commercial or mercantile law, or of general jurisprudence.

1412 We have stated hereinbefore that the Supreme Court of the United States invariably accepted and adopted, (though required to overrule its previous decisions) the construction of the constitutional provisions or legislative enactment by the Courts of the State from which the case originated, and we may say that the only other exception wherein the Supreme Court disregards the principles of law as determined by the Court of last resort of the various States is where a principle of commercial or mercantile law is involved, in which latter event the Supreme Court decides for itself the rule by which it will be governed.

Unquestionably it was within the legitimate sphere of the Constitutional Convention which adopted Section 213, *et al*, to adopt them and to provide for their enforcement, and this being true, the language of Mr. Justice Field in the case of Missouri Pacific Railway *vs.* Humes, 115 U. S., 512, is peculiarly applicable as follows:

1413 "If the laws enacted by a State be within the legitimate sphere of legislative power, and their enforcement be attended with the observance of those general rules which our system of jurisprudence prescribes for the security of private rights, the harshness, injustice and oppressive character of such laws will not invalidate them as affecting life, liberty or property without due process of law."

The cases of Minn. & St. L. Ry. *vs.* Emmons, 149 U. S., 364, and Beer Co. *vs.* Mass., 97 U. S., 23-25 are to the same effect.

It seems to us, therefore, that the principle *of res adjudicata*, as contended for in the petition for re-hearing, has no application whatsoever to this case.

We are told, however, in the petition for re-hearing that the opinion and judgment in this case does not accord full faith and credit to the decree of the Federal Court between the same parties hereto. It is said that the decree herein, in failing to give full faith and credit to the Federal Court decree, denies the validity of

1414 an authority exercised under the Constitution and laws of the United States, and that rights were claimed and accorded to

the appellant under the Federal decree in question that have be denied by the opinion and judgment herein.

It is unnecessary to review the authorities cited in the petition fo re-hearing on this question, as it is quite manifest that they have n application whatever to this case.

The appellee has not claimed, and has not obtained by the decr affirmed herein, any rights under the Constitution or laws of th United States. The opinion herein does not draw in question th validity of any treaty or statute, or any authority exercised unde the United States. The opinion does not question the validity of th judgment of the Federal Courts between the parties hereto, nor th validity of a statute of or any authority exercised under any Sta repugnant to the Constitution or treaties or laws of the United State and the opinion does not affect the right, title, privilege or immunit of the appellant claimed or accorded under the Constitution, or an treaty, or statute of, or permission held, or authority exe
1415 cised under the United States, and it is perfectly manifest t our minds that the cases cited and copiously quoted fro under the second point in the petition for re-hearing have no applic tion whatsoever to the case at bar.

In conclusion we beg to submit:

1. To constitute *res adjudicata* the judgment or decree interpos as such must be by a Court possessed not only of jurisdiction over th subject matter and the parties, but with concurrent power and a thority to finally construe the constitutional provisions or statu involved.

2. It being conceded that this Court, and that this Court alone h the power and right to finally construe its Constitution and statute the Federal Court decree relied upon cannot possibly be interpos as *res adjudicata*.

3. The Federal Court, in the litigation between the parties here had the power to determine their rights as to interstate shipment that decree is confined to that single question, and no right accorde appellant thereunder is disturbed to the slightest extent by th opinion herein.

1416 4. The rights of the parties hereto under Kentucky's Co stitution and statutes, as interposed by this Court, can be e forced in this State without affecting the appellant's duties in an other State.

5. The rights accorded the parties under the opinion herein a purely local, and enforceable only within this State.

6. The adoption by Kentucky of the constitutional provisions co strued by the Court herein, and its passage of the legislative enac ments or statutes in furtherance of the purposes of the Constitutio was a valid exercise of the police power of the State, and by the pla language of the opinion were not intended to, and do not affect inte state commerce.

7. It is made apparent from a careful reading of the opinio herein, that therein there is no failure *to give full faith and cred* to the Federal Court decree between the parties hereto.

We respectfully submit that the petition for a re-hearing should be overruled.

——— ———,
Attorneys for Appellee.

1417 Be it remembered that on the 18th day of January A. D. 1907, at a Court of Appeals held at the Capitol at Frankfort, the following order was entered:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jeff.

Came the appellant by counsel, and filed a reply to appellees response to petition for rehearing.

1418 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
versus
CENTRAL STOCK YARDS COMPANY, Appellee.

Reply to Response to Petition for Rehearing.

In the response to the petition for rehearing filed herein by appellee's counsel, under the heading of "*res adjudicata*," counsel apparently confuses the question of *res adjudicata* with the question of *stare decisis*.

The appellant, in its petition for rehearing, did not make any question of *stare decisis;* and did not, and does not, deny the right of this court to construe the statutes and Constitution of the State for itself; and further, did not, and does not, deny that the
1419 Federal Court would be bound by the construction of the statutes and Constitution of the State by this court in another case, except in so far as such construction be in violation of the Constitution or laws of the United States. The question raised by the petition for rehearing was not what might or might not be decided in another case of similar facts, but as to what had actually been decided in a court of competent jurisdiction, between the same parties, with the same facts, and with exactly the same relief asked. In order that the matter may be clearly before the court, we copy the prayer for relief in the bill filed by appellee in the Federal Court:

"Wherefore, the plaintiff prays that the defendant, the Louisville & Nashville Railroad Company, be by mandatory order of injunction immediately ordered and required to receive, bill, transport, transfer, switch and deliver all shipments of live stock tendered to it
1420 outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between its

said line and the line of the Southern Railway Company in Kentucky destined to the Central Stock Yards Station, Ky., or to the Central Stock Yards, Ky., or any such live stock consigned to any individual, partnership, firm or corporation at said Central Stock Yards, Ky., or at said Central Stock Yards Station, Ky., or via the Southern Railway Company in Kentucky, destined to said yards or station, and that it also be required whenever so requested by the consignor and consignee or owner of said stock, at any of its stations, to recognize the right of said parties to change the destination of said shipment, and that it be required to change said destination and make delivery thereof at one of the points of physical connection between the tracks of said defendant's line and the tracks of the Southern Railway Company in Kentucky, for de-
1421 livery by the said Southern Railway Co. at the Central Stock Yards Station, Ky., or to whomsoever there consigned, and further prays that until notice is given and hearing had upon the application for an injunction, that this Honorable Court grant unto plaintiff a restraining order as herein prayed, and to be effective until this Honorable Court can make decision upon the said motion for an injunction, and plaintiff prays for a judgment herein against the defendant for the sum of three thousand ($3,000.00) dollars, and, upon final hearing, for a perpetual injunction as prayed herein, and for all such other necessary and proper relief, the premises considered."

This relief asked for by appellee thus included the alleged right of changing the destination, after reaching Kentucky, of interstate shipments. Yet the relief was denied in the Federal Court
1422 and the bill dismissed. The question, therefore, we again submit, is *res adjudicata* and settled. But the judgment affirmed by this court gives this exact relief, and thus nullifies the effect of the Federal Court judgment, which denied it.

In appellee's response to appellant's petition for rehearing, the following language is used:

"The opinion of this court in no manner attempts to affect interstate shipments of live stock, and, therefore, there can be no foundation for the theory that the opinion disturbs, in the slightest extent, the final decree of the Federal Court, or to any extent affects the right of the appellant under said decree as between the parties litigant hereto.

"The judgment, affirmed by the decree herein, in no manner affects the rights of the parties hereto as determined in the Federal litigation referred to, and in no manner attempts to regulate the duties of the appellant outside of Kentucky, and when this
1423 must necessarily be taken as a conceded fact, it is difficult to understand how the principle of *res adjudicata* can have any application to this case whatsoever.

"The Federal Court, in the litigation between the parties hereto, had the power to determine their rights as to interstate shipments; that decree is confined to that single question, and no right accorded appellant thereunder is disturbed to the slightest extent by the opinion herein.

"The rights accorded the parties under the opinion herein are purely local, and enforcible only within this State.

"The adoption by Kentucky of the constitutional provisions construed by the court herein, and its passage of the legislative enactments or statutes in furtherance of the purposes of the Constitution was a valid exercise of the police power of the State, and by
1424 the plain language of the opinion were not intended to, and do not affect interstate commerce."

We are at a loss to understand exactly what is meant by this language. If, however, it is meant that the judgment, affirmed by the decree herein, in no way affects or controls shipments originating outside of the State of Kentucky (*i. e.*, interstate shipments), but only relates to and affects shipments originating and ending in the State (*i. e.*, intrastate shipments), and this court will so state, the appellant is willing to withdraw its petition for rehearing, or that it may be overruled, so far as the question of *res adjudicata* is concerned.

T. B. HARRISON,
HELM BRUCE,
Attorneys for Appellant.

1425 Be it remembered that on the 8th day of February A. D. 1907, at a Court of Appeals held at the Capitol at Frankfort, the following order was entered, to-wit:

LOUISVILLE AND NASHVILLE R. R. Co.
v.
CENTRAL STOCK YARDS Co.

Jeff.

The Court being sufficiently advised it is considered that appellants petition and motion for rehearing be and the same is overruled.

1426 Be it remembered that on the 18th day of March 1907, there was filed in the office of the Clerk of the Court of Appeals a petition for Writ of Error, and which is hereto attached, as follows:

1427 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD Co., Appellant,
vs.
CENTRAL STOCK YARDS Co., Appellee.

Petition for a Writ of Error.

To the Honarble Ed. C. O'Rear, Chief Justice of the Court of Appeals of Kentucky:

The Louisville & Nashville Railroad Company, appellant in the above entitled cause in the Court of Appeals of Kentucky, hereby

petitions for the allowance of a writ of error from the Supreme Court of the United States to the Court of Appeals of Kentucky in order that the judgment of the Court of Appeals in that case may be re-examined by the Supreme Court of the United States, and reversed, if found to be erroneous; the ground of this application is that the Louisville & Nashville Railroad Company claimed, and still claims, in said case that the sections of the Constitution and statutes of Kentucky, which by the judgment of the said Court of Appeals are made applicable to the said controversy are, if susceptible of the construction placed upon them by said Court of Appeals, contrary to the Constitution of the United States, because they are attempts to regulate commerce between the States, and because also they operate to deprive the said Louisville & Nashville Railroad Company of its property without due process of law.

1428 And the said Louisville & Nashville Railroad Company further petitions that, upon the allowance of said writ of error, an order be made suspending, until the final determination of said cause upon said writ of error, the operation and effect of the injunction granted by the Jefferson Circuit Court in the judgment affirmed by the said Court of Appeals, in so far as it applies to shipments made from points outside of Kentucky to points within Kentucky, or from points within Kentucky to points outside of Kentucky.

H. L. STONE,
THOS. B. HARRISON, JR.,
HELM BRUCE,
Att'ys for Appellant, Louisville & Nashville Railroad Company.

1428½ [Endorsed:] Filed before me March 18th 1907 Ed. C O'Rear Chief Justice Court of Appeals of Ky. Filed Mar 18 1907 J. Morgan Chinn Clerk.

1429 And that on said date there was filed in the office of the Clerk of the Court of Appeals, an Assignment of Errors, and which is attached and is as follows:

1430 Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD CO., Plaintiff in Error,
vs.
CENTRAL STOCK YARDS CO., Defendant in Error.

Plaintiff in Error, the Louisville & Nashville Railroad Company in the above entitled cause, assigns as errors in the judgment of the Court of Appeals of Kentucky herein complained of the following towit:

I.

The Court erred in failing and refusing to give due, full or any faith, credit or effect to the judgments or decrees of the Courts

the United States in the suit of Central Stock Yards Company *vs.* Louisville & Nashville Railroad Company, which were specially pleaded and relied on in said above entitled cause.

II.

The Court erred in holding that, as to shipments originating outside of Kentucky, the Central Stock Yards Company, defendant in error, can require them to be delivered in Kentucky in accordance with the alleged requirements of the Constitution of Kentucky, by exercising, after the shipments get inside of Kentucky, what is called the right of changing the destination *in transitu*, and in holding that this is not a regulation of interstate commerce, and
1431 in ordering plaintiff in error to recognize such alleged right.

III.

The Court erred in holding that it is not a regulation of interstate commerce to require that shipments originating outside of Kentucky, destined to a point within Kentucky, should, after getting within Kentucky, be switched or delivered by plaintiff in error in accordance with what the court held to be the law of Kentucky, and in ordering it so to do.

IV.

The Court erred in holding that to require the plaintiff in error, against its will, to give up the possession and control of its own cars to the Southern Railway Company, or other person, to be used for transportation or storage, or other purposes, does not deprive it of its property without due process of law, and in ordering it so to do.

V.

The Court erred in holding that to compel the plaintiff in error, against its will, to act as a mere transfer company in the City of Louisville, by switching over its terminal properties in that city cars coming into the city, or going out from the city, over the roads of other railroad companies, or by switching cars simply between two points within said city, when forming no part of a shipment coming into the city or going out of the city over the line of the road of plaintiff in error, did and does not deprive it of its property without due process of law, and in ordering it so to do.

VI.

The Court erred in affirming the judgment of the Jefferson
1432 Circuit Court appealed from.

Wherefore plaintiff in error prays that the judgment of the Court of Appeals of Kentucky in the above entitled cause be reversed.

H. L. STONE,
THOS. B. HARRISON, JR.,
HELM BRUCE,
Att'ys for Plff in Error.

1432½ [Endorsed:] Filed Mar. 18 1907 J. Morgan Chinn Clerk.

1433 And that on said date there was filed in the office of the Clerk of the Court of Appeals, A Writ of Error to the Supreme Court of the United States, and the Order allowing said Writ, and which is attached hereto as follows:

1434 UNITED STATES OF AMERICA,
Western District of Kentucky, Sixth Judicial Circuit.

The President of the United States to the Honorable Judges of the Court of Appeals of Kentucky, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said Court of Appeals, before your or some of you, being the highest court of law or equity in said State, in which a decision could be had in a suit between the Louisville & Nashville Railroad Company, appellant, and the Central Stock Yards Company, appellee, wherein was drawn in question the validity of a constitution and statute of, and an authority exercised under, the State of Kentucky on the ground of their being repugnant to the Constitution and laws of the United States, and in which the decision was in favor of their validity; and where a right, title, privilege and immunity were claimed under the Constitution, and a statute of, and authority exercised under, the United States, and the decision was against such right, title, privilege and immunity specially set up and claimed by said appellant under said Constitution, statute and authority, a manifest error hath happened to the great damage of the said Louisville & Nashville Railroad Company as by this complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein
1435 given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in the District of Columbia on the 8th day of April next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of March in the year of our Lord One Thousand Nine Hundred and Seven, and of the Independence of the United States of America, the One Hundred and thirty-first.

[Seal 6th Circuit Court, Wes. Dist. Ky., U. S. of America,]

A. G. RONALD,
Clerk of the Circuit Court of the United States,
Western District of Kentucky.
By HENRY F. CASSIN,
Deputy Clerk.

Allowed by
ED. C. O'REAR,
Chief Justice, Court of Appeals of Kentucky.

1435½ [Endorsed:] Filed Mar. 18, 1907. J. Morgan Chinn, Clerk.

1436 Court of Appeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD CO., Appellant,
vs.
CENTRAL STOCK YARDS CO., Appellee.

Order on Petition for Writ of Error.

The writ of error from the Supreme Court of the United States to the Court of Appeals of Kentucky, this day applied for by the Louisville & Nashville Railroad Company, appellant in the above entitled cause, is hereby allowed; and it is ordered that until the final determination of said cause on said writ of error, the injunction granted by the Jefferson Circuit Court in the judgment affirmed by the said Court of Appeals of Kentucky shall be suspended in its operation and effect, in so far as it applies to shipments made from points outside of Kentucky to points within Kentucky, or from points within Kentucky to points outside of Kentucky.

March 18th, 1907. ED. C. O'REAR,
Chief Justice, Court of Appeals of Kentucky.

1436½ [Endorsed:] Filed Mar. 18, 1907. J. Morgan Chinn, Clerk.

1437 And on said date there was filed in the office of the Clerk of the Court of Appeals, the original Citation, and proof of service, endorsed thereon, and which is hereto attached as follows:

1438 UNITED STATES OF AMERICA,
District of Kentucky, Sixth Judicial Circuit, ss:

To Central Stock Yards Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the* 17th day of April next, pursuant to a Writ of Error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein the Louisville & Nashville Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this eighteenth day of March, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty-first.

ED. C. O'REAR,
Chief Justice, Court of Appeals of Kentucky.

*Not exceeding 30 days from the day of signing.

[Endorsed:] Filed Mar. 18, 1907. J. Morgan Chinn, Clerk.

Received the within Citation at Louisville, Ky., March 19th, 1907, and executed same March 19th, 1907, on Central Stock Yard Company by delivering a true copy hereof to Joseph C. Dodd one of the attorneys for the Central Stock Yard Company, Defendant in error.

Fees, $2.00.

This March 19th, 1907.

G. W. LONG, *U. S. M.*,
By WM. BLADES, *D. M.*

Service of citation accepted this March 19, 1907.

1439 And on said date there was filed in the office of the Clerk of the Court of Appeals, a Writ of Error Bond, and which is in words and figures as follows:

Court of Apeals of Kentucky.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellant,
vs.
CENTRAL STOCK YARDS COMPANY, Appellee.

Know all men by these presents, That we, Louisville & Nashville Railroad Company and Attilla Cox are held and firmly bound unto Central Stock Yards Company in the sum of One Thousand Dollars to be paid to the said Central Stock Yards Company its successors executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

1440

Sealed with our seals, and dated this Eighteenth day of March A. D. 1907.

Whereas, The above named Louisville & Nashville Railroad Company hath prosecuted a Writ of Error from the Supreme Court of the United States to the Court of Appeals of Kentucky to reverse the judgment rendered in the above entitled suit, by the Court of Appeals of Kentucky.

Now, therefore, the condition of this obligation is such, that if the above named Louisville & Nashville Railroad Company shall prosecute its said Writ of Error to effect, and answer all costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, [L. S.]
By HELM BRUCE, *Att'y.* [L. S.]

1441

ATTILLA COX, [L. S.]
By HELM BRUCE, *Att'y in Fact.* [L. S.]

Sealed and delivered in presence of
ED. C. O'REAR,
Chief Justice Court of Appeals of Kentucky.

442 With said bond there was filed a Power of Attorney from Attilla Cox to Thomas B. Harrison, Jr., and Helm Bruce, nd which is in words and figures as follows:

Whereas, the Louisville & Nashville Railroad Company is about o apply to the Honorable Ed. C. O'Rear, Chief Justice of the Court f Appeals of Kentucky, to allow a writ of error from the Supreme ourt of the United States to the Court of Appeals of Kentucky in he case of Louisville & Nashville Railroad Company, Appellant, *vs.* entral Stock Yards Company, Appellee, lately decided by the ourt of Appeals of Kentucky, and will be required to execute some haracter of bond for the purpose of perfecting said writ of error, ther a supersedeas bond or bond for costs, or such bond as the said hief Justice may require,

Now therefore, I, Attilla Cox, do hereby constitute and appoint Helm Bruce and Thos. B. Harrison, Jr. and each of them, my attorneys in fact and do authorize them, or either of them, acting for e and in my behalf and in my name to execute as surety for the said Louisville & Nashville Railroad Company such bond as 443 shall be required for the purpose of perfecting and prosecuting said writ of error, whether it be a bond for costs, or supersedeas bond, or such other bond as may be required by said Chief ustice.

ATTILLA COX.

Subscribed and acknowledged before me by Attilla Cox this 6 day March 1907.

My commission expires the 28 day of Jan. 1908.

S. H. OWEN.

444 The Commonwealth of Kentucky,
The Court of Appeals, sct:

In obedience to the Commands of the Within Writ of Error, I rewith transmit to the Supreme Court of the United States a duly rtified transcript of the complete record and proceedings in the se named in said writ, with all things concerning the same.

In Testimony Whereof I have hereunto set my hand and caused y official seal to be hereunto affixed. Done at the Capitol at ankfort, this the 20 day of March, 1907.

[Seal Court of Appeals, Kentucky.]

J. MORGAN CHINN,
Clerk Court of Appeals of Kentucky,

Endorsed on cover: File No. 20,646. Kentucky court of appeals. rm No. 268. Louisvile & Nashville Railroad Company, plaintiff error, *vs.* Central Stock Yards Company. Filed March 30th, 07. File No. 20,646.

Office Supreme Court, U.
FILED.
APR 21 190
JAMES H. McKENN
CL

51.

No. [redacted]

Supreme Court of the United States.

Louisville & Nashville Railroad Company, - - - - - - - Plaintiff in Error,

vs.

Central Stock Yards Company, - - Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

HELM BRUCE,
Attorney for Plaintiff in Error.

HENRY L. STONE,
JAS. P. HELM,
KENNEDY HELM,
Of Counsel.

P. C. HUNSBACHER PRESS, LOUISVILLE, KY.

Supreme Court of the United States.

Louisville & Nashville Railroad Company, - - - - - - - Plaintiff in Error,

vs.

Central Stock Yards Company, - - Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

HELM BRUCE,
Attorney for Plaintiff in Error.

HENRY L. STONE,
JAS. P. HELM,
KENNEDY HELM,
Of Counsel.

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Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - - - - - - - *Plaintiff in Error,*

vs.

CENTRAL STOCK YARDS COMPANY, - - *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

This case comes to the court by writ of error to the Court of Appeals of Kentucky. The case of Central Stock Yards Company v. Louisville & Nashville Railroad Company, 192 U. S. 568, decided by this court February 23, 1904, was a suit between exactly the same parties, involving the same alleged cause of action and exactly the same prayer for relief as are involved in the present suit, except that that case was confined to interstate shipments, while in the case at bar all kinds of shipments are covered, both state and interstate. This court in the case mentioned held that the complainant was entitled to no part of the relief prayed for, either under the principles of common law, or under the provisions of the Interstate Commerce Act, or of the Constitution of Kentucky, and, therefore, affirmed a judgment of the Circuit Court of

Appeals for the Sixth Circuit, which in turn had affirmed a judgment of the Circuit Court of the United States for the Western District of Kentucky, dismissing the plaintiff's bill. But in the case at bar, although the decree in the Federal Court case was pleaded in bar, so far as interstate shipments are concerned, the court refused to give any faith or credit to the decree of the Federal Court in the former case, but, disregarding it altogether, entered a judgment covering both state and interstate shipments, giving the exact character of relief to complainant to which this court had held it was not entitled.

The judgment now complained of, so far as interstate shipments are concerned, not only disregards a judgment of this court between the same parties, and concerning the same alleged cause of action, and which was pleaded in the present case, but it enforces with reference to such interstate shipments a section of the Constitution of Kentucky, which, as interpreted by the Court of Appeals of Kentucky, is clearly a regulation of interstate commerce, as was expressly held by the Circuit Court of Appeals in the Federal Court case heretofore referred to (though this particular point was not passed on by this court); and the judgment in the present case, furthermore, as to all classes of shipments, both State and interstate, orders the Louisville & Nashville Railroad Company to deliver up its cars, against its will, to another railroad company, to wit: the Southern Railway Company, for the purpose of being delivered by it to its (the latter company's) depot. Furthermore, the judgment practically requires the Louisville & Nashville Railroad Company to turn over its terminals in the city of Louisville to the use of other railroad companies, and to become itself a mere "transfer company" within that city.

Of course, it is claimed by plaintiff in error that this judgment is erroneous upon three grounds: (1) that it fails to give faith or credit to a judgment of a court of the United States between the same parties concerning the same facts; (2) that it enforces a provision of a State law, which is an attempted regulation of interstate commerce, and (3) that both with reference to state and interstate commerce, it deprives plaintiff in error of its property without due process of law, by taking its property, to wit: its cars, away from it against its will and turning them over to another carrier for use by the latter; and by taking from it its terminals and by forcing it also to perform the duties of a mere transfer company in the city of Louisville.

We have thus attempted to give a very general statement in brief outline of the subject of this controversy, but in order that the court may thoroughly understand it, it is necessary to give a somewhat more detailed statement.

More than twenty-five years ago the Louisville & Nashville Railroad Company, which brings large quantities of live stock into the city of Louisville from other parts of Kentucky and from all over the South, made a contract with the Bourbon Stock Yards Company, which had stock yards in Louisville, located on the tracks of the Louisville & Nashville Railroad Company, by which the Bourbon Stock Yards were made the live stock depot for Louisville of the Louisville & Nashville Railroad Company. In this contract ample provisions were inserted to insure the proper handling of live stock in loading and unloading, and proper attention to it after being unloaded. The charge for loading and unloading was to be paid by the Louisville & Nashville Railroad

Company, and not by the owner of the stock. Provision was also made that in case the owner should desire to keep the stock at these yards, reasonable charges only should be made for the care of the stock. And the Louisville & Nashville Railroad Company agreed that it would make these yards its exclusive depot and would receive and deliver all live stock only at those yards. (Rec. 64.) From that day to this, all the provisions of this contract have been faithfully kept by both the parties to it. There is no complaint any where that the facilities of the Bourbon Stock Yards for the handling of Louisville live stock are in any respect insufficient, or that the method of handling same is in any wise improper, or the charges exorbitant. And, on the other hand, it is admitted that the Louisville & Nashville Railroad Company, without any discrimination whatever, has received and delivered all live stock only at those yards, and has steadily refused to receive or deliver any where else for anybody. Plaintiff's own amended petition shows this. (Rec. 133.)

Just before the institution of this litigation, the Central Stock Yards Company established a stock yards on the line of the Southern Railway Company just a few yards outside of the limits of the city of Louisville (this particular location being adopted doubtless to avoid city taxes) and a contract was made between the Southern Railway Company and the Central Stock Yards Company, by which the Southern Railway Company made the Central Stock Yards its live stock depot for the city of Louisville. This contract is likewise in the Record. (Rec. 402.) After the establishment of these stock yards as the live stock depot of the Southern Railway Company a demand was made upon the Louisville &

Nashville Railroad Company that whenever it brought live stock to the city of Louisville it should, if the owner thereof so desired, turn its cars containing this live stock over to the Southern Railway to be carried by the Southern Railway to its live stock depot, to wit: the Central Stock Yards, instead of being delivered by the Louisville & Nashville Railroad Company to its own live stock depot at the Bourbon Stock Yards. In other words, to use the language of this court in the case heretofore before it, an attempt was made to *snatch the freight from the transporting company at the moment and for the purpose of delivery.* (192 U. S. 57.) Of course, the Louisville & Nashville Railroad Company refused to permit its freight, or its cars, to be thus snatched from it; and it continued to do business exactly as it had been doing for the last twenty years, to wit: by delivering all of its live stock at the Bourbon Stock Yards, and refusing to deliver any where else, either to the Southern Railway for the Central Stock Yards or to any other individual or corporation that might be located upon its tracks. Hence, this law suit.

On November 4, 1901, the Central Stock Yards Company filed a petition in the Jefferson Circuit Court of Kentucky, in which it alleged the establishment of its stock yards, and the fact that there were certain points of physical connection between the tracks of the Louisville & Nashville Railroad Company and those of the Southern Railway in the city of Louisville at which the Louisville & Nashville Railroad Company could deliver cars to the Southern Railway, and that a demand had been made upon it to issue bills of lading for stock calling for the Central Stock Yards, either as its destination or as consignee, and to deliver all such cars to the South-

ern Railway for the Central Stock Yards, but that it had refused to do so; and the petition prayed that it be compelled to do so.

Upon the filing of this petition, a motion for a preliminary injunction pursuant to the prayer of the petition was made; numerous affidavits were read, showing the facts claimed by the respective parties, and the case having been submitted, thereafter an elaborate opinion was delivered by the judge of the Jefferson Circuit Court, sustaining the motion for a preliminary injunction. When it came to entering the order pursuant to this ruling, a question was suggested as to whether or not the court intended to make that order applicable to interstate shipments of stock; and the court will observe the very careful language of the order. (Rec. 74.) The effect of it seems plainly to be that as to stock offered the Railroad Company in Kentucky, it was made the duty of the company to receive it and bill it in accordance with the directions of the shipper, either to the Central Stock Yards, or to any person at the Central Stock Yards, to be delivered by way of the Southern Railway, after reaching Louisville; whereas, as to other stock "coming over its lines in Kentucky" (which, of course, would include interstate shipments of stock), it was ordered to deliver this to the Central Stock Yards, *if it was so consigned.* In other words, the effect of the order seemed to be, as to interstate stock, that if the Railroad Company received it, say at Columbia, Tenn., and issued a bill of lading for it consigning it to the Central Stock Yards, or to a person at the Central Stock Yards, it should be delivered in accordance with the bill of lading. Otherwise the order did not seem to regulate the handling of interstate shipments.

Such being the situation, it was only a few days before a rule for contempt was issued against the Railroad Company to show cause why it should not be punished for failing to deliver certain interstate shipments of live stock at the Central Stock Yards, and affidavits were filed showing its refusal to do so in certain specific cases. (Rec. 111, etc.) To this rule the Railroad Company responded, in effect, that these were interstate shipments of stock; that they had not been billed to the Central Stock Yards, but simply to Louisville; and that, therefore, they were not covered by the order of injunction, and the company had delivered them to its live stock depot at Louisville. (Rec. 117.)

This response the court held to be insufficient, delivering a written opinion upon the subject (Rec. 120), from which it will be seen that the court stated that when this stock was delivered to the Railroad Company at Columbia, Tenn., the shipper demanded that it be billed to the Southern Railway Company at Louisville for delivery by it to the Central Stock Yards, but that the Railroad Company had refused to so bill it, whereupon it was billed simply to Louisville; but that after the stock got into Kentucky and had reached the southern part of the city of Louisville, at what is called the "Break-up Yards" of the Railroad Company (which is not at all the point of delivery, but is several miles from the live stock depot), the owner of the stock had given notice to the Railroad Company "to *change the destination* of said car of cattle by delivering same *to the Southern Railway Company for delivery at Central Stock Yards.*" (Page 121.) And the court held that by this kind of a device this interstate stock could be brought within the provisions of the Kentucky Constitution, which the court

held to require the stock to be turned over to the Southern Railway at a point of physical connection between the two railroads. The court held that this was not a regulation of interstate commerce, saying:

> "Therefore, when these goods, although being an interstate shipment, came within the State of Kentucky at the South Louisville Station, it became the duty of this court, under the law of Kentucky, and the facts of this case, to require same to be transferred and delivered in accordance with the express provision of the Constitution." (Rec. 129.)

The court also held that its order of injunction covered the case, and, therefore, held the defendant guilty of contempt, and ordered a fine to be imposed upon it.

At this point, the defendant, feeling absolutely sure that the order of injunction did not cover the case, and that it had not been guilty of contempt, applied to the Court of Appeals for a writ of prohibition against Judge Miller, the judge of the Jefferson Circuit Court, to prevent the infliction of this fine, on the ground that it had been guilty of no contempt and should not be fined for that which it had not done. And the Court of Appeals granted the writ of prohibition, holding that the order of injunction did not cover interstate shipments of stock, which were simply billed to Louisville; and that defendant had been guilty of no contempt; and, hence, should not be punished for the act complained of (Louisville & Nashville R. R. Co. v. Miller, 112 Ky. 464).

The opinion of the Court of Appeals in this case was delivered on January 10, 1902. Counsel for plaintiff evidently reached the conclusion that they could not get

the relief they desired on interstate shipments of stock in the State Court; and accordingly on the next day after the delivery of this opinion, to wit: on January 11, 1902, they filed a bill against the Louisville & Nashville Railroad Company in the United States Circuit Court for the Western District of Kentucky, in which they alleged exactly the same state of facts which they had alleged in their petition in the State Court, and prayed exactly the same character of relief, except that they confined it to interstate shipments of stock, whereas the petition in the State Court had made no distinction between State and interstate shipments. Furthermore, in this bill in the Federal Court they injected the additional idea of their right to demand a "change of destination" after the interstate shipment came within the State of Kentucky. Except as to this insertion in the bill in the Federal Court bill of the idea as to change of destination, the facts alleged in the bill in the Federal Court were exactly the same as those alleged in the petition in the State Court, including the statement of the organization of the plaintiff and defendant companies, and the relation of the Southern Railway to each of them, and the refusal of the Louisville & Nashville Railroad Company to deliver cars to the Southern Railway for the Central Stock Yards, and the great injury that the Central Stock Yards were thereby suffering, etc. And the prayer of the bill in the Federal Court was exactly the same as the prayer in the petition in the State Court, except that in the Federal Court the bill was confined to interstate shipments of stock, whereas the other was not, and except also that the prayer in the Federal Court bill included a demand to be allowed to change the destination of stock so as to require it to be delivered to the Southern Rail-

way Company for the Central Stock Yards, although it might originally have been billed simply to Louisville. On that subject the prayer was as follows:

> "And that it also be required, whenever so requested, by the consignor or consignee or owner of said stock, at any of its stations, to recognize the right of said parties *to change the destination* of said shipment, and that it be required to change said destination and make delivery thereof at one of the points of physical connection between the tracks of said defendant's line and the tracks of the Southern Railway Company in Ky., for delivery by the said Southern Railway Co. at the Central Stock Yards Station, Ky., or to whomsoever there consigned," etc. (Rec. 177.)

We call express attention to this matter with reference to the alleged right to change the destination, because it will hereafter be seen that the State Court, in entering the judgment which is now in review, adopted this device for giving to plaintiff the relief it asked, and for compelling the defendant to handle its interstate shipments of live stock in accordance with the wishes of the plaintiff, an express prayer to that effect having been added to the petition in the State Court by amendment. (Rec. 161.) Yet we see that identically this same prayer, for this same relief, was expressly embraced in the prayer of the bill in the Federal Court, which was dismissed.

After the institution of the suit in the Federal Court the defendant pleaded the pendency of that suit in abatement of the suit in the State Court, so far as the latter sought relief as to interstate shipments of stock. (Rec. 144.)

To this answer the court sustained a demurrer, saying that a judgment in the Federal Court case would not be a bar to a judgment in the State Court case. (Rec. 146.)

The result of the case in the United States Circuit Court was that the court dismissed the bill. Thereupon an appeal was taken by the Central Stock Yards Company to the United States Circuit Court of Appeals, where the case was elaborately heard, both on oral arguments and by briefs; and that court on July 8, 1902, in an opinion by Judge Day, held that the Louisville & Nashville Railroad Company was not required, either by the principles of common law or by the provisions of the Interstate Commerce Act, to give the character of delivery demanded by the Central Stock Yards Company; and that, if the Constitution of Kentucky could be construed as requiring it, then it was clearly an attempt to regulate interstate commerce, and void. And accordingly the court affirmed the decree of the Circuit Court, dismissing the bill. (Central Stock Yards Co. v. Louisville & Nashville R. R. Co., 118 Fed. 113; present Rec. 179.)

After this judgment of the Circuit Court of Appeals, the defendant in the State Court case then tendered an additional amended answer, pleading this judgment in bar of the proceedings in the State Court case so far as they embraced interstate shipments of stock, and tendered with the amended answer, as exhibits, a copy of the bill of complaint and amended bill of complaint in the Federal Court case, and a copy of the opinion of the Circuit Court of Appeals. But the court, evidently adhering to its original view that the judgment in the Federal Court case was not a bar to the State Court case,

overruled the motion to file this amended answer, but made the same, with its exhibits, parts of the record for purposes of appeal. (See order, Rec. 167, and the Amended Answer with its Exhibits, beginning at page 168 of the Record.)

In this connection it should further be explained, as will be seen from the papers just referred to, that in the Federal Court the plaintiff, Central Stock Yards Company, by an amended bill claimed relief *under the Constitution of Kentucky*, as well as under the Interstate Commerce Act, the jurisdiction of the court being based on the diversity of citizenship (plaintiff being a Delaware corporation and defendant a Kentucky corporation), as well as on the claim of a Federal right under the Act of Congress.

Subsequent to the tendering of this amended answer the case in the State Court was submitted in chief. The court held the case under advisement from April 2, *1903* (Rec. 167), until April 30, *1904*, manifestly waiting the result of an appeal which it was advised had been taken to this court from the judgment of the Circuit Court of Appeals, heretofore mentioned.

On the appeal to this court the judgment of the Circuit Court of Appeals was affirmed in an opinion by Justice Holmes. (Central Stock Yards Co. v. Louisville & Nashville R. R. Co., 192 U. S. 568.) In this opinion this court held, as the Circuit Court of Appeals had done, that the Louisville & Nashville Railroad Company was not required to perform the services demanded of it by the Central Stock Yards Company. It held that it was not so required, either by common law principles or by any provision of the Interstate Commerce Act. It treated the claim under the Constitution of Kentucky

somewhat differently from that in which it had been treated by the Circuit Court of Appeals. As heretofore explained, the Circuit Court of Appeals had held that if the Constitution of Kentucky (Section 213) was susceptible of the construction placed upon it by the complainant, to wit: as requiring interstate shipments of stock to be turned over by the Louisville & Nashville Railroad Company, after reaching the city of their destination, to the Southern Railway Company for the purpose of delivery to the Central Stock Yards, then this was an attempted regulation of interstate commerce, and, of course, ineffective. This court, however, entered into a consideration of the meaning of Section 213 of the Constitution of Kentucky, and held that *it did not mean what complainant claimed,* saying:

> "A requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies must be taken to refer to cases where the freight is destined to some further point for transportation over a connecting line. It can not be intended to sanction the snatching of freight from a transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it necessary to consider whether, under any interpretation, it can be sustained." (192 U. S. 571.)

After the decision of this case by the court (which was February 23, 1904) the opinion was called to the attention to the judge of the Jefferson Circuit Court,

who then had the case in that court under submission. It was not necessary, of course, to further plead *res adjudicata,* for that plea had already been offered, after the judgment of the Circuit Court of Appeals, before the case was submitted.

Thus it will be seen that both the Circuit Court of Appeals and this court, in a suit where the court had jurisdiction, between the same parties, involving the same state of facts, and the same prayer for relief, as in the State Court case, except that the Federal Court case was confined to interstate shipments of stock, had held and adjudged that the defendant, the Louisville & Nashville Railroad Company, was not required, either on common law principles or by the terms either of the Interstate Commerce Act or of the Constitution of Kentucky, to perform the services demanded of it by the Central Stock Yards Company. But, nevertheless, the Jefferson Circuit Court, subsequent to both of these adjudications, to wit: on April 30, 1904, delivered an opinion holding that the Louisville & Nashville Railroad Company was required to perform the services demanded of it both as to state and interstate shipments of stock. (Rec. 187.) And pursuant to this opinion a judgment was entered to that effect. (Rec. 205.)

The court's treatment of this court's opinion and judgment is simply inexplicable. *It said this court did not consider either the Interstate Commerce Act or the Constitution of Kentucky.* The court on this subject, referring to the opinion of this court, and referring also to the briefs before the Circuit Court, says:

> "By supplemental brief it is urged for defendant that this decision of the United States Supreme

Court is conclusive of this case; not, however, in the sense that it is *res judicata,* but that it is an adjudication directly in point." (Rec. 188.)

This statement in the judge's opinion is true only in this way, that *as he had refused to allow the plea of res adjudicata to be filed,* we insisted in our brief that the opinion of the Supreme Court of the United States was at least persuasive authority on the question of the proper construction of both the Interstate Commerce Act and the Constitution of Kentucky. But the learned judge of the Jefferson Circuit Court held that it was not even that, and said that the court had not considered either of these two instruments in its opinion. On that subject he said:

> "It is clear, however, from an examination of the opinion that it does not have the force of a precedent directly in point, *for the court expressly said that neither a construction of the Constitution of Kentucky nor of the Interstate Commerce Act was necessary in deciding the case, but that the case was decided upon (common?) law principles."* (Rec. 188.)

Having thus brushed away the opinion of this court delivered in a case between exactly the same parties and upon the same state of facts, under the same prayer for relief, as was involved in the case before him, and construing the identical instruments which he was called upon to construe, he then proceeds to discuss in a very elaborate opinion the questions involved, as if the case had never been before this court at all, and decided every question in favor of the plaintiff and against the defendant.

The judgment follows the opinion, and it will be observed that the handling of interstate shipments is evidently intended to be covered by the last paragraph of the judgment, which is as follows:

> "And it is further ordered that the defendant, Louisville & Nashville Railroad Company, be, and it is required whenever so requested by the consignor, consignee or owner of said stock, at any of its stations, and particularly at its break-up yards in South Louisville, Kentucky, to recognize the right of the said consignor and consignee or owner to change the destination of said shipment, and upon payment of the full Louisville freight rate, and that the defendant (be) required to change said destination and make delivery thereof at one of the points of physical connection between its tracks and the tracks of the Southern Railway Company in Kentucky at Louisville for delivery by the said Southern Railway Company to the Central Stock Yards Company at Central Stock Yards, Kentucky, or to any person, firm, partnership or corporation doing business at said Central Stock Yards Station, upon the payment of the full Louisville, Kentucky, freight rate, and the presentation and surrender to defendant of the bill of lading or carriage contract for the shipment referred to, by the person shown thereby to have the right to receive from defendant the said shipment, or his agent, with the endorsement of the consignee upon the said bill or contract." (Rec. 206.)

On application to the Court of Appeals, it suspended the judgment in so far as it affected interstate shipments of stock. (Rec. 467.)

From this judgment of the Jefferson Circuit Court an appeal was taken to the Court of Appeals of Kentucky, where it was affirmed in an opinion by Judge Settle (Judge Barker dissenting). The majority opinion simply follows the opinion of Judge Miller, of the Circuit Court, even as to the treatment of this court's opinion in 192 U. S. On that subject, and after referring to a certain rule laid down by the Circuit Court in its opinion, the Court of Appeals then said:

"We think the rule last stated applicable to the case at bar, though counsel for appellant contend that it is not and cite the following authorities which, it is insisted, support their view: *Central Stock Yards Co.* v. *L. & N. R. R. Co.*, 192 *U. S.* 568; Covington Stock Yards Co. v. Keith, 139 U. S. 128; Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., 67 Fed. Rep. 35.

"These, as we will presently endeavor to show, were purely stock yards cases, *decided upon supposed common law principles without respect to Section* 213, *State Constitution, for which reason we do not accept them as authority in point.*

"It is, however, earnestly argued by counsel for appellant that the case of Central Stock Yards Co. v. L. & N. R. R. Co., *supra,* is an adjudication directly in point, but this claim does not appear to be conclusive as the following excerpts from the opinion of the Supreme Court in that case will show:

" 'We also lay on one side the question whether the section of the Constitution of Kentucky is or is not invalid as an attempt to regulate commerce between the States. For we are of opinion that the de-

fendant's conduct is not within the prohibition or requirement of either the Act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed. * * * We have discussed the case as if the two stock yards were side by side. They were not, but they were both points of delivery for cattle, having Louisville for their general destination. They were both Louisville stations in effect. It may be that a case could be imagined in which a carriage to another station in the same city by another road might be regarded as a bona fide further transportation over a connecting road and within the requirements of the Kentucky Constitution. However that may be, we are of opinion that the court below was entirely right, so far as it appears, in treating this as an ordinary case of stations at substantially the same point of delivery, and therefore as one to be dealt with as if they were side by side.' It is patent the Supreme Court expressly declined to apply either the Constitution of Kentucky or the Interstate Commerce Act to the case before it, and in so holding incidentally declared the defendant's conduct was not within the prohibition or requirements of either the State Constitution or the Act of Congress, though admitting in a subsequent paragraph of the opinion that a case might arise in which carriage to another station in the same city by another road might be regarded as a bona fide further transportation over a connecting road and within the requirements of the Kentucky Constitution." (Rec. 475.)

Thus it appears that because this court held that neither the Interstate Commerce Act nor the Constitution

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L.V.N. R.R.Co
vs
Coulson Stock
Yards Co
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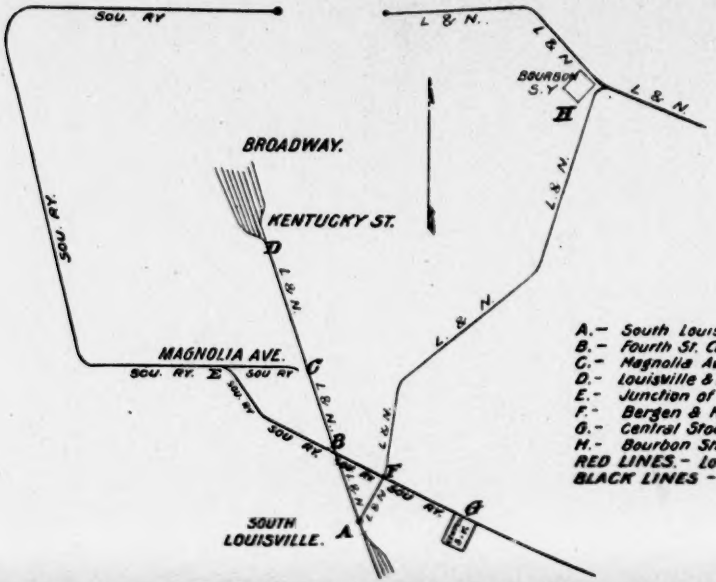

A.— South Louisville.
B.— Fourth St. Crossing Southern Ry. & Louisville & Nashville.
C.— Magnolia Avenue connection.
D.— Louisville & Nashville Kentucky St. Yards.
E.— Junction of two Southern Railway Lines.
F.— Bergen & Meehan Switch.
G.— Central Stock Yards.
H.— Bourbon Stock Yards.
RED LINES.— Louisville & Nashville Railroad
BLACK LINES — Southern Railway.

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of Kentucky required the defendant to perform the services demanded of it, the Court of Appeals holds that this court's opinion is not an authority at all upon the question of whether or not either of those instruments does cover the case. What the court means by saying that this court "*incidentally* declared the defendant's conduct was not within the prohibition or requirements of either the State Constitution or the Act of Congress," we are not able to explain.

As to its allusion to that part of this court's opinion where it says that the case might be construed as if the two stock yards were side by side, it is sufficient to say that the exact facts were before this court as to the situation of the two stock yards and the railroads connecting them; and the very opinion of the Circuit Court of Appeals, which the court was then reviewing, embraced a diagram of the situation, which is here inserted (Rec. 180); and this court took pains to say that, while it considered the cases as if they were side by side, yet, in fact, they were not. Evidently taking pains to explain this in order that its opinion might not be misunderstood.

While the opinion of the Court of Appeals in this way disposes of this court's opinion, and holds that it is not even an authority in point, it absolutely disregards the plea of *res adjudicata* presented by the Record. No one could tell from the reading of that opinion that any such plea had ever been offered in the case. As the briefs before the Court of Appeals are, of course, not copied into the Record, one would not know that this matter of *res adjudicata* had been presented to the court were it not for the dissenting opinion of Judge Barker. In this opinion, after dissenting vigorously from the opinion of the court on the merits of the case, even as to purely

State traffic, Judge Barker then takes up the history of the litigation in the Federal Court, as shown by the Record, and shows that that suit was brought by this same plaintiff against this same defendant on the same state of facts, seeking the same relief, so far as interstate shipments are concerned, and that this had been pleaded, or offered to be pleaded, in the State Court, and that the judgments of the Federal Courts in that case were absolutely a bar as *res adjudicata*, so far as interstate shipments of stock were concerned. (Rec. 501.)

Subsequent to the delivery of these opinions the Railroad Company filed a petition for rehearing, in which it directed the court's attention to the one single point of *res adjudicata* presented by the Record, which the court had wholly disregarded in its decision of the case, and urged upon the court that this was not only a bar as *res adjudicata*, but that the court's action in disregarding it was a refusal to give full faith and credit to the judgment of the Federal Court, and was in effect a refusal to uphold a right claimed under an authority exercised under the United States. (Rec. 505.) But the Court of Appeals overruled this petition without a word of explanation; so that, so far as the plea of *res adjudicata* is concerned, one could not tell from the opinion of the majority that the Court of Appeals had ever heard of such a defense in the case.

The foregoing is a very full statement of the facts of this case, and the course of the litigation as to *one distinct branch* of the business involved, embracing the matters which were the subject of the complaint under the original and first amended petitions, to wit, the refusal of the Louisville & Nashville Railroad Company to *de-*

liver cars of live stock to the Southern Railway for *delivery to the Central Stock Yards;* but there is another branch of the case, and of the business involved, which was brought into the litigation by an amended petition filed on January 10, 1902, about two months after the filing of the original petition, which we have not yet discussed, as we preferred to make a complete and connected statement of the other part of the case without interruption.

About two months after the original institution of the suit, an amended petition was filed, in effect demanding that the Louisville & Nashville Railroad Company act as a mere *transfer company* for the Central Stock Yards, by receiving stock from it, or from the Southern Railway for it, *for the mere purpose of being transferred to another part of the city of Louisville.* (Rec. 131.)

The facts of this branch of the case may be briefly stated. The Louisville & Nashville Railroad Company has terminals in the city of Louisville, including *depots and terminal tracks,* which it has been acquiring through a course of half a century, and which have cost it an immense sum of money. Many efforts have been made by other railroads, which have come later into the field, and have had neither time nor money to acquire such facilities, to get the use of the terminals of the Louisville & Nashville Railroad. Among its terminals is its live stock depot, which was established at the Bourbon Stock Yards as early as 1880, twenty-eight years ago, in the midst of the butchers and packers, in a part of the city called "Butchertown," and which depot is directly connected with the Louisville & Nashville line to the East, and is likewise connected by means of what is called its transfer track with the Louisville & Nashville lines to the South.

The Southern Railway enters Louisville, as we have heretofore seen, in the southeastern portion thereof, and runs practically around three sides of the city to its depot at Seventh and Water Streets, as is shown on the plat heretofore mentioned. So circuitous is this route that from where it enters the city to its depot is nine miles. At the point of the Southern Railway's entrance into the city, but which is outside the city limits, are located the Central Stock Yards, constituting the live stock depot of the Southern Railway for the city of Louisville, just as the Bourbon Stock Yards are the depot of the Louisville & Nashville Railroad for that city.

But instead of the Central Stock Yards being in the center of the butchering and packing interests of the city, they are far removed from it; and the lines of the Southern Railway do not run near Butchertown. The result of so locating these stock yards was that if the butchers and packers of the northeastern portion of the city, where those interests are mainly located, bought live stock at the Central Stock Yards, they were a long distance from their establishments, where they wanted the stock delivered in order to be butchered; and they were unable to have deliveries made in that part of the city by the Southern Railway, because it does not run into that part of the city. The result was that the Central Stock Yards Company demanded that the Louisville & Nashville Railroad Company should act as a mere *delivering agent*, or *transfer agent*, for it, and should receive stock which had been bought at the Central Stock Yards by these butchers and packers of Butchertown and should transfer the same around to the Bourbon Stock Yards, and there deliver it to these people.

Of course the court will immediately see the very great importance of this question to the Louisville & Nashville Railroad, for it involves the whole question of whether or not it can be required to act in the city of Louisville as a mere local delivering or transfer company for industries located either on its line or the line of any other company entering the city, and which might desire to have car load lots of freight transferred between it and some other point in the city. It knew that if the Central Stock Yards Company should be upheld in its demand for this kind of service for the transfer of live stock, then other industries, or any railroad entering the city, having no terminals and handling any other character of commodity, would demand the performance of the same kind of service, and the use of the Louisville & Nashville Railroad Company's terminals for such a service. If this can be done it very greatly depreciates the value of these terminals to the Louisville & Nashville Railroad Company for the purposes for which they were acquired, to wit, the attraction of business to its own lines and the expeditious handling thereof.

Therefore, to this demand on the part of the Central Stock Yards Company the Louisville & Nashville Railroad Company responded in effect that it was not a transfer company or delivering company, but a railroad company; that its terminals in the city of Louisville had been secured at very great cost in order to furnish facilities for the handling, storing, delivering and receiving of its own traffic as a railroad company; that its depots had not been secured as warehouses, either for other railroad companies or for individuals; and that its terminal tracks had not been secured for the mere purpose of making deliveries in different parts of the city for other

railroad companies, or for persons who might desire to deliver commodities from one part of the city to another that its terminals were crowded with its own business, that their capacity for this business was already severely tested; and that it could not and would not turn itself into a transfer company, nor devote its properties, secured for the handling of its own railroad business, to the handling of the business of a transfer company in the city of Louisville, either for a competing railroad company or for an industry located on any other line in the city.

The Jefferson Circuit Court, however, held that the Louisville & Nashville Railroad Company must perform this service, and must switch cars as thus demanded by the Central Stock Yards Company. And the Court of Appeals of the State affirmed this part of the judgment as well as the rest of it.

After the entry of the judgment of affirmance by the Court of Appeals, a writ of error from this court was allowed by Chief Justice O'Rear, of the Court of Appeals, who, in allowing the writ, again suspended the operation of the judgment in so far as it applies to interstate shipments of stock.

ASSIGNMENT OF ERRORS.

The formal assignment of errors is to be found on page 554 of the Record. In substance they are as follows:

(1) That the court erred in failing and refusing to give due, or any, faith, credit or effect to the judgments or decrees of the courts of the United States in the suit

of Central Stock Yards Co. v. Louisville & Nashville R. R. Co., which were specially pleaded and relied on in the case.

(2) The court erred in holding that as to interstate shipments of stock the Railroad Company could be required to conform to what the court held to be the meaning of Section 213 of the Constitution of Kentucky, as to delivery of stock, whether such demand was made originally at the point of shipment or under the guise of a change of destination, and erred in holding that this was not a regulation of interstate commerce.

(3) The court erred in holding that to require the company to give up its cars to the Southern Railway, to be used by that company either for transportation or storage, or for other purposes, does not deprive it of its property without due process of law.

(4) The court erred in holding that it did not deprive the Louisville & Nashville Railroad Company of its property without due process of law to require it to act as a mere local transfer company in the city of Louisville by switching over its terminal properties in that city cars coming from roads of other railroad companies, or by switching simply between two points within the city, when forming no part of a shipment coming into the city or going out of the city over its line.

ARGUMENT.

RES ADJUDICATA.

That the refusal of the State Court to give effect to the judgment of the Federal Court between those parties, if an error, is one which this court can correct, in other

words, presents a Federal question, we suppose it is not necessary to consider with any great elaboration, as it has been so held by this court in many cases. In the case of Dupasseur v. Rocherau, 21 Wallace, 130, this court said:

> "Where a State Court refuses to give effect to the judgment of a Court of the United States, rendered upon the point in dispute, with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the Act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States establishing the Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution; and it is clearly within the chart of appellate power given to this court over cases arising in and decided by the State Court." (Page 134.)

The same principle has been asserted by many subsequent cases, such as Embry v. Palmer, 107 U. S. 3; Crescent City Live Stock Company v. Butchers Union Slaughter House Company, 120 U. S. 141; Deposit Bank v. Frankfort, 191 U. S. 499, etc. As these authorities settle the question of this court's jurisdiction upon the point now under consideration, we stop with the citation of them without further argument.

This brings us to the question of whether or not the judgment of the Federal Court in the case of Central

Stock Yards Co. v. Louisville & Nashville R. R. Co. is conclusive between those same parties in this action, so far as interstate shipments of stock are concerned. It is difficult for us to understand on what theory or principle this defense of *res adjudicata* is overruled. As we have already shown, the Court of Appeals in its opinion refused to make any allusion to it, and we have never seen any brief which attempted to argue the question. The only suggestion we have ever seen of an attempted reason for this conclusion is contained in the following few lines in the opinion of the Jefferson Circuit Court, when the plea in abatement was first filed, wherein the court says:

> "Treating the fourth paragraph and the amendment as one paragraph, the demurrer will have to be sustained, as a judgment in one court will not be a satisfaction or bar to a similar judgment in the other court. If it be an action at all it is a continuing cause of action to be enforced by any court at any time, regardless from the view of *res judicator,* as to what some other court may have done in a particular case. A decision of another court would be authoritative and persuasive, but not a bar as would be the case of a judgment for money upon a contract or for a tort, as was the Henderson case, 86 Ky." (Rec. 146.)

We have never known what the court meant by the language here used, and are compelled to leave it to speak for itself. We are, in effect, told that after the Central Stock Yards went to the Federal Court for relief and presented the facts to the court, and after both parties

had been heard and the matters had been thoroughly considered and the case decided, both by the Circuit Court and by the Circuit Court of Appeals and by this court, all this amounts to nothing and is as if that case had never existed, and as if these courts had never spoken, and that the Central Stock Yards Company is, therefore, at perfect liberty to renew the litigation when and where it pleases and fight all the questions over again. To us this seems simply incredible. Let us look at the other side of the matter. Take the very judgment that is now under review before the court in the present case. Is that a judgment, and is it conclusive of anything between the parties? If it should be affirmed by this court, would that end the litigation? Or, on the other hand, would the unsuccessful party, the Louisville & Nashville Railroad Company, be at liberty to disregard that judgment and insist on doing business in the old way, and insist on relitigating with the Central Stock Yards Company the question of its right to do so? These questions, of course, answer themselves. Suppose this court should affirm the judgment of the State Court and should order the Louisville & Nashville Railroad Company to turn over its cars to the Southern Railway to be delivered to the Central Stock Yards at Louisville, and suppose then that the next day, or next month, after this judgment of affirmance, the Louisville & Nashville Railroad Company should refuse to turn over a car of live stock to the Southern Railway for the Central Stock Yards, would the Central Stock Yards Company then institute a new suit against the Louisville & Nashville Railroad Company and give the latter an opportunity to relitigate the whole question with it? Of course, it would not do so; it would simply issue a rule for contempt against the Railroad

Company *based on the existing judgment* of a court having jurisdiction of the parties and which had decided the question between them; and the only question which would arise on a hearing of that rule for contempt would be, not the original question as to whether the Railroad Company was entitled by law to do as it had done, but simply the question of whether or not it had *violated the judgment of the court.* And all this simply means that a judgment in favor of the Central Stock Yards commanding the Louisville & Nashville Railroad Company to perform the service set forth in the judgment would, until reversed or set aside, be forever binding and conclusive between the parties.

Then can it be possible that in such a case, if the court decides *for the plaintiff,* its decision is a binding judgment which ends the controversy, but that if the court decides *for the defendant,* the whole matter is still left open for further litigation and further controversy, so that nothing is settled? Yet that is exactly the contention of the Central Stock Yards Company in this litigation and is the effect of the judgment of the State Court in this case. This entire matter, so far as interstate shipments of stock are concerned, was fought out through the Federal courts, including a judgment by this court, and in that litigation it was solemnly determined that the defendant, the Louisville & Nashville Railroad Company, was *not under any obligation to render the character of service demanded,* and, therefore, the judgment went *for the defendant,* and the bill of the complainant was dismissed. On the other hand, in the State Court the matter has been determined exactly the other way, and it has therein been determined that the Louisville & Nashville Railroad Company *is under obligation to render the serv-*

ice demanded, and judgment has gone *for plaintiff*. And now it is said that the judgment for the plaintiff in the State Court case is a binding and conclusive judgment, forever settling this controversy; but that the judgment for the defendant in the Federal Court was of no effect at all, and left the controversy open to be renewed the day after that judgment was entered. It is not conceivable that such can be the law.

Judge Barker, of the Court of Appeals of Kentucky, in his dissenting opinion, put the matter this way:

> "Thus the State Court has wholly disregarded and treated as a nullity a judgment of the Federal courts between the identical parties and upon exactly the same alleged cause of action. If the judgment of the Federal courts refusing the relief sought is not final and conclusive between the parties, as *res adjudicata,* then I do not see how the judgment of the State Court, granting the relief, will be any more conclusive; for I take it that a judgment refusing certain relief on a certain state of facts, is just as conclusive as a judgment granting the relief between the same parties upon the same state of facts. And if neither of these judgments is final, or settles the controversy between these parties, then it may go on forever." (Rec. 503.)

We know of no court that has more consistently enforced the doctrine of *res adjudicata* or "the thing adjudged" than has this court.

In Southern Pacific R. Co. v. United States, 168 U. S. 1, this court, in an opinion by Mr. Justice Harlan, said:

"The general principle announced in numerous cases is that *a right, question or fact* distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, can not be disputed in a subsequent suit between the same parties or their privies; and, even if the second suit is for a different cause of action, *the right, question or fact* once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between the parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them." (Page 48, our italics.)

Accordingly in the case then before the court, which involved the question of the title to certain land, which in turn depended upon the validity of a certain map, which had been filed in attempted conformity to an Act of Congress, the court held that the validity of this same map had been involved in a suit between the same parties, concerning a different piece of land, and that, as this question had been determined in the former case between these parties, it was determined forever, and was binding upon them in the latter case.

Again, in New Orleans v. Citizens' Bank, 167 U. S. 371, which involved a question of taxation, and where the question was as to whether or not a judgment concerning the taxes for one year was conclusive in a subsequent litigation concerning the taxes for another year, this court, in an opinion by Mr. Justice White, said:

> "The proposition that because a suit for a tax for one year is a different demand from the suit for a tax for another, therefore *res adjudicata* can not apply, whilst admitting in form the principle of the thing adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies. This is the elemental rule, stated in the text books and enforced by many decisions of this court." (Page 396.)

But in the case at bar, we are not simply insisting upon the conclusiveness of a former judgment upon some single question presented in a case that presented a different cause of action, but in a case that involved *the same cause of action* as the present case, so far as interstate shipments of stock are concerned; and in such a case the rule is as laid down by this court in Cromwell v. Sac County, 94 U. S. 353, where the court said:

> "In considering the operation of this judgment it should be borne in mind, as stated by counsel, that

there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. * * * But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." (Page 352.)

Now, the cause of action asserted in the case at bar, so far as it involves interstate stock, is precisely the same cause of action that was asserted in the Federal Court case heretofore referred to. The court has only to compare the petition in the State Court with the bill in the Federal Court to see that the cause of action attempted to be stated in each is exactly the same, except that the latter, as heretofore explained, is confined to interstate shipments of stock, whereas the other is general, making no distinction. It is true that in the petition in the State Court case, six particular instances are mentioned where the defendant had theretofore failed to comply with what plaintiff deemed its rights as to shipments of certain

designated cars, and there is a specific prayer for the delivery of those particular cars, but the court will immediately see that this is a very small part of the purpose of the suit, for the petition contains elaborate statements of the capacities of the plaintiff for handling live stock, and the purposes for which it was formed and the large amount of money it had expended, and contains the statement that "the announced purpose and expressed intention of defendant by written and verbal instructions to its agents and by its conduct as aforesaid and by its declared intention to the plaintiff to continue to so fail, neglect and refuse to bill, transport, switch and deliver live stock consigned to the Central Stock Yards Company, or in care of the same to the said Southern Railway Company * * *, unless immediately restrained and prevented, will cause great and irreparable injury and damage to the plaintiff and its business." (Rec. 7.) And contains the further statement "that if required to institute an action for damages upon each and every refusal of the defendant to transport, switch or deliver live stock as aforesaid, great delay will be occasioned to shippers and dealers in live stock and to plaintiff in receiving the same for sale; and by the failure of plaintiff to receive the said live stock for care and attention and feeding thereof great damage will be done to plaintiff and suffering inflicted upon such live stock and the business of plaintiff will be disrupted and totally ruined; and separate and distinct actions will be wholly inadequate to the injury so inflicted." (Rec. 7.) And finally, in the prayer in the State Court, after praying for the delivery of the six specific cars mentioned in the petition, the prayer then proceeds as follows: "And, further, that the said defendant, the said Louisville & Nashville Railroad Company, be

ordered and directed and required to receive, bill, transport, switch and deliver all live stock tendered or offered for delivery and shipment over its line to one of the points of physical connection in Louisville, Kentucky, between the tracks of the said Louisville & Nashville Railroad Company and those of the said Southern Railway Company in Kentucky for delivery by said Southern Railway Company at said Central Stock Yards, Kentucky," etc. (Rec. 8.)

And by an amended petition plaintiffs add the further prayer that "the Louisville & Nashville Railroad Company be required, whenever so requested by the consignor and consignee, or owner of said stock, at any of its stations, and particularly at the break-up yards in South Louisville, Ky., to recognize the right of the parties *to change the destination* of said shipments, and that defendant be required to change said destination and make delivery thereof at one of the points of physical connection between the tracks of the Southern Railway Company in Kentucky for delivery," etc. (Rec. 161.)

So when we turn to the bill of complaint in the Federal Court, we find the same statement of facts, except as to the particular instances *in the past* where defendant is said to have disregarded plaintiff's rights. We have the same description of the purposes of the plaintiff, and the nature of its plant, and its capacities, etc.; we find the same allegation that the defendant "has announced its intention and purpose to refuse to receive, bill, transport, switch or deliver any live stock, the shipment of which originates outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between said line and the line of the Southern Railway in Kentucky destined to the Central

Stock Yards Station, Kentucky," etc. (Rec. 172); and we find the same statement that plaintiff "has no adequate or ample remedy at law for the injury of its business inflicted as aforesaid, and threatened and complained of as hereinbefore alleged, and that if required to institute an action for damages upon each and every refusal of the defendant, to receive, bill, transport, transfer, switch or deliver such interstate live stock, great delay will be occasioned to the shippers and dealers in live stock and the plaintiff in receiving the same for sale, and by the failure of the plaintiff to receive the said live stock for care and attention and feeding thereof, great damage will be done to plaintiff and suffering inflicted upon said stock, and the business of plaintiff will be disrupted and totally ruined, and separate and distinct actions will be wholly inadequate to the injury so inflicted." (Rec. 177.) And we find in conclusion the same *prayer* as in the State Court (except it is confined to interstate stock) plaintiff praying that the defendant "be by mandatory order of injunction immediately ordered and required to receive, bill, transport, transfer, switch and deliver all shipments of live stock tendered to it outside of the State of Kentucky, consigned or tendered to be consigned to any point of physical connection between its said line and the line of the Southern Railway Company in Kentucky, destined to the Central Stock Yards Station, Ky., * * * and that it also be required whenever so requested by the consignor and consignee or owner of said stock, at any of its stations, to recognize the right of said parties to change the destination of said shipment," etc. (Rec. 177.)

Here we have exactly the same cause of action in these two suits, one in the State Court, and the other in the

Federal Court, one instituted only two months later than the other, between the same parties, alleging the same general facts and insisting upon the same alleged civil rights, demanding the same relief. In the Federal Court case it was determined that the plaintiff was not entitled to the service it demanded, either under any common law right or under the Interstate Commerce Act, or under the Constitution of Kentucky, and not entitled to the relief, either in direct form or under the form of change of destination, after the stock had arrived in Kentucky; and, therefore, the bill was dismissed, and no relief under any form, or on any account, was granted. But now it is said by the State Court that this determined nothing; that the whole matter is still at large, and the State Court has accordingly undertaken to adjudge that plaintiff is entitled to what the Federal Court held it was not entitled to; that it is entitled to the character of service demanded; that defendant was wrong in refusing it; that plaintiff is entitled to the relief asked for, and thereupon a judgment is entered granting that relief. We can not imagine a plainer case of disregard of the fundamental principle which requires that a thing once adjudged by a court of competent jurisdiction between two parties shall be considered as settled.

As said by Judge Brewer in delivering the opinion of the Supreme Court of Kansas, when he was a member of that bench, in Smith v. Auld, 31 Kan. 262:

> "The whole philosophy of the doctrine of *res adjudicata* is summed up in the mere statement that a matter once decided is finally decided, and all the learning that has been bestowed, and all the rules that have been laid down, have been for the purpose of enforcing that one proposition."

If, however, it should be considered that this whole question is at large, that nothing was finally determined in the long litigation between this plaintiff and this defendant in the case of Central Stock Yards Co. v. Louisville & Nashville Railroad Co. in the sense of being *res adjudicata*, we take up the original question as to whether or not the section of the Constitution of the State of Kentucky, relied upon by plaintiff, if it be construed as plaintiff insists, is an attempt to regulate interstate commerce. That section is as follows:

> "All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section

shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

It is insisted that under this section plaintiff has the right to insist that the defendant, the Louisville & Nashville Railroad Company, when it brings stock from Alabama or Tennessee, or any other State, to Louisville, Kentucky, shall turn over its cars containing that stock to the Southern Railway to be delivered by the Southern Railway to the Central Stock Yards, located on the latter's line.

If this be the true construction of this constitutional provision, then we insist it is void as an attempt to regulate interstate commerce. And if we can not rely upon the judgment of the court in the former case, as absolutely conclusive in the sense of *res adjudicata*, we suppose we can certainly rely upon it as very persuasive authority upon the principle of *stare decisis*. Surely we can rely upon it with at least as much confidence as if this exact case had arisen in some sister State and been decided on exactly the state of case here presented.

On the appeal from the decree of the United States Circuit Court for the Western District of Kentucky, in Central Stock Yards Co. v. Louisville & Nashville Railroad Co., the Circuit Court of Appeals considered this whole question. And after having held, in an opinion by Judge Day, now Mr. Justice Day, that the plaintiff was not entitled to the service demanded of defendant, either on common law principles, or under the Interstate Commerce Act, the court then turned to the question of the State Constitution, and on that subject said:

"It is further alleged that the duty of complying with the complainant's demand rests upon the defendant company, because of the requirements of the Constitution of the State of Kentucky and the laws passed in pursuance thereof. Assuming, without deciding, that the Kentucky Constitution and the Legislature require the defendant company to receive, deliver, transport and transfer freight to any point that is in physical connection with the tracks of another company, so that the complainant has, as to traffic originating in Kentucky, the right to require that the shipment be received and transported in accordance with the prayer of the bill, the question remains, have the Kentucky Constitution and Statutes any operations beyond the limits of that State? The interstate commerce clause of the Federal Constitution has given rise to much litigation and frequent construction by the Supreme Court. It is thoroughly settled that the power of Congress to regulate commerce is plenary, and no State has the right to regulate purely interstate commerce. On the other hand, the State has the right to make provisions as to matters within its own boundaries intended as aids to commerce, not thereby regulating interstate traffic. Without undertaking to reconcile or consider the numerous decisions we may refer to the County of Missouri (Mobile?) v. Kimball, 102 U. S. 691. Mr. Justice Field, with his usual clearness, has called attention to the sound rules of construction to determine what is and what is not within the power of the State:

" 'Perhaps some of the divergence of views upon this question among former judges may have arisen

from not always bearing in mind the distinction between commerce as strictly defined, and its local aids or instruments or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Acting upon it by separate States is not, therefore, permissible.' (Page 702.)

"It is within the power of a State to require connecting tracks between two railroad companies at an intersection for the transfer of cars used in the local business of such lines of railroad. This may have been necessary for the accommodations of State commerce. Wisconsin R. R. v. Jameson, 179 U. S. 287. So it is competent for a State to require a railroad company to stop a certain number of trains each day at stations having a certain number of inhabitants, within the State. Such regulations do not interfere with the delivery or transportation of passengers traveling between States in such wise as to be regulations affecting interstate traffic. The statute simply amounted to requiring three trains of the company to stop at the station named each day. Lake Shore v. Ohio, 173 U. S. 123. Likewise a State may require a telegraph company to deliver a message. Western Union v. James, 162 U. S. 650.

"But it is thoroughly well settled that a State may not regulate interstate commerce, using the

terms in the sense of intercourse and the interchange of traffic between the States. In the case at bar, we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction it would follow it could regulate interstate commerce. This it can not do.

"We reach the conclusion that no case was made in the bill justifying the relief prayed for, and that there was no error committed dismissing the bill." (Rec. 186; 118 Fed. 120.)

As heretofore explained, when the case reached this court the validity of Section 213 of the Constitution of Kentucky, on the assumption that it required the character of service insisted upon, was not decided, because the court reached the conclusion that Section 213 was not susceptible of the construction put upon it by the plaintiff, and, therefore, this court did not find it necessary to pass on whether or not it would be valid if that were its construction. But this court has in another case, from another State, *quoted and expressly approved the very language of the Circuit Court of Appeals delivered in this case, which we have just quoted.*

In McNeil v. Southern R'y, 202 U. S. 543, the Railroad Commission of North Carolina had made an order requiring the Southern Railway to *deliver its cars with*

the freight in them on the spur track of a shipper, which connected with the Southern Railway tracks. It was insisted that this was an attempted regulation of interstate commerce. This court held that it was, and in an opinion by Mr. Justice White, said:

> "Not being called upon so to do, we do not pass upon all the general regulations formulated by the Commission on the subject stated, but are clearly of opinion that the court below rightly held that the particular application of those regulations with which we are here concerned was a direct burden upon interstate commerce and void. Viewing the order which is under consideration in this case as an assertion by the corporation commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce. On the other hand, treating the order as but the assertion of the power of the corporation commission to so direct in a particular case, in favor of a given person or corporation, the order not only was in its very nature a direct burden and regulation of interstate commerce, but also asserted a power concerning a subject directly covered by the act of Congress to regulate commerce and provide remedies to prevent unjust discriminations and the subjecting to undue disadvantages by carriers engaged in interstate commerce.

"The direct burden and resulting regulation of interstate commerce operated by an alleged assertion of State authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in Central Stock Yards Co. v. Louisville & Nashville R. R. Co., 118 Fed. Rep. 113. The court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon interstate commerce and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in interstate commerce transportation to deliver cars of live stock moving in the channels of interstate commerce at a particular place beyond its own line different from the general place of delivery established by the railway company. In pointing out that if the legislation in question was entitled to the construction claimed for it, it would amount to a State regulation of interstate commerce, it was aptly and tersely said (p. 120):

" 'It is thoroughly well settled that a State may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the States. In the case at bar we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one State to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction, it would follow it could regulate interstate commerce. This it can not do.' " (p. 561.)

Thus it will be seen that, while this court did not directly pass upon the question of the validity of Section 213 of the Constitution of Kentucky on the appeal from the judgment of the Circuit Court of Appeals, in Central Stock Yards v. L. & N. R. Co., yet in this later case it has expressly put the stamp of its approval upon that decision; and this, it seems to us, should end the matter, if it be possible that there can be any end to any question decided against the Central Stock Yards Company in this litigation.

It may be insisted that the Central Stock Yards Company does not and did not insist that the Louisville & Nashville Railroad Company should deliver its cars of live stock "at a particular place beyond its own line different from the general place of delivery established by the railway company," and that this court misunderstood the case in saying so. But, of course, it is manifest that such is in fact the effect of what is demanded in the present case, and has always been demanded; for while it is true that plaintiff does not demand that the Louisville & Nashville Railroad Company set its cars off on a side track belonging to some private individual, it is demanding that the Railroad Company set these cars off on a side track belonging to another railroad company. This has all the inconveniences and imposes all the burdens that setting such cars on the side track of an individual would have; as between the two cases, the Railroad Company would infinitely rather set the cars off on the side track of an individual than set them off on the side track of another railroad company, because if it set them off on the side track of an individual, such individual could not take the cars away, but they would be within the power of the railroad company owning them to go back

and get them; whereas, if they are set on the side track of another railroad company, and thus put in the possession and under the control of another railroad company, then the company owning them loses control over them. This court, therefore, was right in treating the demand made in the present case as equivalent to a demand to set the cars off on the side track of an individual, except, as suggested above, that the demand in the present case is much more onerous, and much more of a burden upon the railroad company owning the cars and transporting the freight, than was the demand in the North Carolina case.

Furthermore, as to whether the character of service which it is insisted that Section 213 of the Kentucky Constitution requires of a railroad company, as now demanded by the Central Stock Yards Company, is a burden upon interstate commerce, this court, in the opinion of Mr. Justice Holmes, on the appeal from the Circuit Court of Appeals in the case of Central Stock Yards Co. v. Louisville & Nashville Railroad Co., clearly shows that if the construction now insisted upon be the proper construction, then it is a direct burden upon interstate commerce, for this court's conclusion that such a construction as is now insisted upon could not be a proper construction of that section of the Constitution, was influenced to a considerable extent by the consideration that the requirement would be so *wholly unreasonable* that it could not have been intended, and on that subject the court said:

> "The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad com-

panies must be taken to refer to cases where the freight is destined to some further point by transportation over a connecting line. *It can not be intended to sanction snatching of freight from the transporting company at the moment and for the purpose of delivery.* It seems to us that this would be *so unreasonable* an interpretation of the section that we do not find it necessary to consider whether, under any interpretation, it can be sustained." (Page 571.)

It seems to us we should surely be permitted to stop here with the discussion of this question. If there is such a thing as a question being settled, we should be allowed to treat this as settled, though we may refer to the additional late cases of Central of Georgia v. Murphy, 196 U. S. 194, and Houston, etc., R. Co. v. Mayes, 201 U. S. 321.

We add, however, only this further consideration. In answer to the suggestion that this section of the Constitution of Kentucky is an aid to commerce, we not only call attention to the fact that this court has twice held in effect that it would be a direct burden upon commerce, but we also call attention to the fact that Congress is evidently of the same opinion, for the courts of the United States have several times called attention to the fact that the Interstate Commerce law does not require the interchange of cars between railroad companies. (Oregon Short Line v. Northern Pacific, 51 Fed. 465, 475, opinion by Mr. Justice Field; affirmed in Oregon Short Line v. Northern Pacific, 61 Fed. 158, opinion by Judge McKenna, now Mr. Justice McKenna; Little Rock, etc., R'y Co. v. St. Louis S. W. R. Co., 63 Fed. 775, 778, opin-

ion by Judge Thayer; K. & I. Bridge Co. v. L. & N. R. R. Co., 37 Fed. 629, opinion by Judge Jackson, afterwards Mr. Justice Jackson; and in this very case, to-wit: the opinion by the Circuit Court of Appeals in Central Stock Yards Co. v. Louisville & Nashville Railroad Co., 118 Fed. 113), and yet, although Congress has very lately and very elaborately revised this whole subject in late amendments to the Interstate Commerce Act, it has not seen fit to require one railroad company to deliver its cars to another. We have, therefore, both the judgment of this court and the judgment of Congress against the judgment of the Constitutional Convention of Kentucky as to whether or not such a requirement as is said to be contained in Section 213 is an aid to commerce.

COMPULSORY SURRENDER OF CARS.

The foregoing discussion, we think, disposes of the interstate branch of this case. We come now, however, to a question of vital interest to the Louisville & Nashville railroad Company and to every other railroad company in the country, to-wit, as to whether or not with reference either to state or interstate traffic a State has the power to require a railroad company to deliver up its own cars to another railroad company to be taken possession of by this other company and used by it for purposes of transportation, either in making deliveries or for more extended traffic. We respectfully submit that this is the taking of property without due process of law, and that there is absolutely no warrant for it.

Think of what this means! The cars of a railroad company are its property. They are very valuable prop-

erty, costing a great deal of money in their original acquisition, and the use of which is a most valuable one so long as the cars exist. The railroad company which is well provided with good rolling stock has an immense advantage over one that is not; and one of the problems which a railroad manager has constantly to confront is how to keep proper rolling stock upon his road to accommodate its business. Cases have been known in this country where a railroad has been operated without the ownership of any rolling stock at all, solely by the use of rolling stock belonging to other companies. Times of congestion come when it is impossible for a railroad company to handle the traffic on its own line because it has not sufficient equipment with which to do so. A wise management may to some extent relieve this trouble by spending large sums of money and acquiring an ample amount of rolling stock. But if a State has the power to open the termini of the road, and roll this equipment out upon the lines of other roads without regard to the wishes or the judgment of the owner of the equipment and against its will, then all control and power over the equipment is taken from the owner, its rolling stock may be sent all over the country, and it is thus deprived of that which it has spent large sums of money to acquire as a means of handling its own business on its own line.

The proposition that a State has such power as this is a startling one, and after the most diligent search of which we are capable we have not been able to find where any court in America, except in the case at bar, has ever actually commanded a railroad compa to deliver its cars to another. This case, so far as we have been able to find, and as we believe, is in this respect absolutely unique in American jurisprudence. In addition to our

own independent research for authority among decided cases we have examined the latest text work which we have been able to find on the subject of railroads, to-wit, Elliott on Railroads, in the 1907 edition, an edition late enough to contain a reference to the very case at bar as decided by the Court of Appeals of Kentucky, and, while the author without expressing any individual opinion on the subject, says: "The weight of authority is to the effect that the State may require interchange of cars and reasonable facilities for the public to make connection with or between different carriers" (Vol. 4, Sec. 1685), yet when the cases referred to in the notes in support of this proposition are examined, the case at bar as decided by the Court of Appeals of Kentucky (L. & N. R. Co. v. Central Stock Yards Co., 97 S. W. 778) is the only one in which the delivery of cars by one company to another has been ordered. Other cases there cited discuss the question of interchange of cars, but, as we will presently show, not one of them is a case where one railroad company was ordered to deliver its cars to another.

One case referred to by Judge Elliott, and the one that is most commonly referred to on this subject, is Peoria, etc., R. Co. v. Chicago, etc., R. Co., 109 Ill. 135, 50 Am. Rep. 605. This case simply involved the question of the liability of one railroad company to another railroad company for the destruction of a car belonging to the latter company while in the possession of the former. The car had been voluntarily delivered by the first company and voluntarily received by the second company. The second company was practically a switching or transfer company at Peoria, and the facts showed that its business consisted mainly in taking cars from railroad companies entering Peoria, switching them around to indus-

tries on its lines and then returning them to the company from which they were received. While one of these cars was in the possession of this switching company it was destroyed by fire, whereupon the owner of the car demanded compensation of the switching company. The case, in the mind of the court, turned on the question whether the switching company at the time of the loss held this car as a *common carrier*, or as a mere bailee; and the Supreme Court of Illinois discusses the question of whether or not under the laws of Illinois a railroad company should be considered as a *common carrier of cars*, and it reaches the conclusion that it must be so considered. The court refers to the language of certain of the statutes of the State, forbidding discrimination in the rates charged for hauling cars, and refers also to the fact that the very considerations which induced common law courts in ages past to treat a carrier of goods as an insurer thereof apply to a railroad company carrying the cars of another. In other words, says the court, when one railroad company delivers its cars to another, it has no more power to follow that car and watch it or control it or to know what are the causes that led to its destruction, if it is destroyed, than it has thus to follow and supervise the goods that are in it. On the other hand, the company that has possession of the car has the absolute control over it, and must be presumed to know the facts as to any accident to it. For these reasons the court reached the conclusion that in Illinois, a railroad company should be considered as a common carrier of the cars of another company when in its possession, and, therefore, liable as an insurer of those cars. This is all that was decided in that case, although the court does refer to the practice of railroad companies in interchang-

ing cars, and refers to what a burden it would be if this practice did not exist. As to the power of a State to require one railroad company, against its will, to give up its cars to another company, no such question was involved, and, of course, no such question was decided. But this case has been taken largely as the foundation for the few statements we can find on this subject in any later cases.

The next case in point of time that is referred to on this question is Burlington, etc., R. Co. v. Dey, 82 Ia. 312, 12 L. R. A. 436, 31 Am. St. Rep. 477. That case involved a statute which provided for the making of through rates between connecting carriers, providing that, if the carriers themselves could not agree upon through rates, then the Railroad Commission should make them; and further provided that freight in carload lots should be allowed to go through in the original cars, *unless* the railroad companies would unload and reload the freight at the point of connection without additional charge for this service. In other words, it recognized the fact that a railroad company might have need for its cars, that it might be necessary for it to retain them, and, therefore, it permitted the company to retain them upon changing the load without extra charge therefor. The case really arose, however, over the question of the right of the Railroad Commission to establish the *through rates*. The demand having been made upon the companies to establish through rates, and they having refused to do it, the Commission was about to take the matter up and establish these rates when the railroad company brought suit against the Commission, of which Dey was the chairman, to enjoin the establishment of these through rates. And, in fact, the Supreme Court of

Iowa, in the beginning of its opinion, says that the right to establish these rates is the only question before the court. In the beginning of its opinion, the court says:

> "The plaintiff does not allege any other ground of action than the threatened establishing of 'through joint rates.' No other objections to the statutes in question, pertaining to railroads and rates and joint rates, are made in the petition; none other are before us for consideration. It will be here seen that the statutes under consideration in no way affect the duty, obligation or rights of the plaintiff as a common carrier, further than is done by the regulation of rates of charges. The law relating to the receipt and delivery of freight to connecting lines, and obligations and rights of consignors and consignees, of the railroads, growing out of the relations existing when such connecting lines exist, are not modified, restricted or in any way affected by these statutes." (Page 331.)

But notwithstanding this statement of the court in its opinion the statute in question did direct, as we have heretofore said, that freight in carload lots should either be allowed to go through in the original car, or it should be unloaded and reloaded at point of connection without extra charge for this service; and the report in the case shows that in the briefs of counsel it was insisted that this portion of the statute was an attempt to take property without due process of law, and the statute was, therefore, attacked as invalid in that respect; and in a subsequent part of the opinion of the court it responds to this contention as follows:

"The course of business of railroad companies, originating in the wants and demands of commerce, requires the cars of one company to be delivered to another for transportation. * * * The fact that the transfer of cars from one company to another for the transportation of property over more than one railroad, without breaking bulk, has been practiced so long as to be recognized as of the course of business, *of which we will take judicial notice* (Peoria, etc., R. Co. v. Chicago, etc., R. Co., 109 Ill. 135), is a complete answer to the complaints made in the objections under consideration. Surely a course of business so long pursued, and so extensively prevailing, and demanded by the commerce of this country, can not, when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional. A railroad company, as a common carrier, is required to receive and transport freight offered to it for transportation. The reasons upon which this rule is founded impose upon it the obligation to *haul cars* of other companies brought to it for the transportation over its own road. (Peoria, etc., R. Co. v. Chicago, etc., R. Co.)," p. 335.

It will be remembered, however, that the statute there involved did not absolutely require the delivery of cars by one company to another. It did at least give the option either to deliver the cars or change the freight. And, moreover, the real case before the court was a suit to enjoin the Commission from fixing through rates; and the other provision in the statute about the cars was only discussed in a general attack upon the validity of the

statute in argument. Moreover, two out of the five judges then constituting the Supreme Court of Iowa dissented from the opinion on the express ground that the section of the statute as to delivery of cars or free transfer of freight was unconstitutional as a deprivation of property without due process of law.

As to what the court says about taking judicial notice of the course of business in the transfer of cars—we will consider this somewhat later on in discussing the next case to which we call attention where the same thing is said.

In Jacobson v. Wisconsin R. Co., 71 Minn. 519, 70 Am. St. Rep. 358, wherein the judgment was afterwards affirmed by this court under the style Wisconsin, etc., R. Co. v. Jacobson, 179 U. S. 287, the only question was as to the right of the State to require the railroads to *provide facilities*, viz., a connecting track, at the point of crossing, for the interchange of traffic. The case did not properly involve the question of the right to require one railroad company to deliver its cars to another; the judgment appealed from did not contain any such requirement; and it will be observed that in the opinion of this court no reference is made to any such question. But in the State Court this question is discussed *merely in argument*, in response to the argument of counsel for the railroad company, which was to the effect that there was no use in requiring the physical connection to be made, because after it had been made there would be no power to require one railroad company to deliver its cars to the other. Responding to this argument the State Court used this language:

> "It is contended that, even if the connections were made, neither railway company could be com-

pelled to deliver its loaded cars to the other, to be carried with their contents to their destination over the road of such other; that to compel appellant to deliver up its cars to be carried away from the line of its road to distant points would be in violation of its charter contract and unconstitutional; that for these reasons it is useless to compel the making of the connection in question, and, therefore, the legislative act fails of its purpose and is unconstitutional and void.

"Such interchange of cars between railroads is a common and almost universal practice; yet there are few railroad charters which expressly authorize this practice. It would hardly be contended that such an act of interchange is *ultra vires* upon the part of a railroad company whose charter is silent as to such authority. As incidental to the operation of its road a railroad company has the power to interchange cars with other connecting companies, and this is the ordinary and usual way of doing business. We are clearly of the opinion that the Legislature has the power to compel a common carrier to do business in the ordinary and usual way, and, *therefore,* may compel such interchange of cars as incidental to the business for which the company was chartered. The Supreme Court of Iowa reached the same conclusion in Burlington, etc., R'y Co. v. Dey, 82 Ia. 312; see also Atchison, etc., R. Co. v. Denver, etc., R. Co., 110 U. S. 667; Peoria, etc., R. Co. v. Chicago, etc., R. Co., 109 Ill. 135; Michigan, etc., R. Co. v. Smithson, 45 Mich. 212; State v. Michigan, etc., R. Co., 83 Mo. 144." (Page 531.)

As a matter of fact, as already explained, the judgment of the Circuit Court then under review before the Supreme Court of Minnesota did not require the delivery of cars by one company to another, and what was said on this subject by the Supreme Court of the State was merely in response to argument. Furthermore, that response is very much in line with the argument of the Iowa Court in the Burlington case heretofore mentioned; the argument in the two cases being practically to the effect that it is not beyond the power of railroad companies to deliver their cars to other companies; that the court takes judicial notice of the fact that this "is a common and almost universal practice"; and that the State has the power to command railroad companies "to do business in the ordinary and usual way"; in other words, that *the State has the power to compel railroad companies to do anything which they have theretofore done voluntarily.*

This argument finds so complete and conclusive an answer in the language of this court in Lake Shore, etc., R. Co. v. Smith, 173 U. S. 684, as to relieve us of the necessity of attempting to answer it, except by quotation of this court's own language. In this Lake Shore case the Supreme Court of Michigan had held valid the statute of that State, compelling a company to sell thousand-mile tickets at a certain rate, it being shown in support of the validity of the act that *the company had been in the past accustomed to doing this.* On writ of error this court reversed that judgment and held the act unconstitutional, saying in the course of its opinion by Mr. Justice Peckham:

"It is no answer to the objection to this legislation to say that the company has voluntarily sold

thousand-mile tickets, good for a year from the time of their sale. *What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of the Legislature. Persons may voluntarily contract to do what no Legislature would have the right to compel them to do.* Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the Legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business, which it has the right to change at any moment, furnishes no argument for the existence of a power in the Legislature to pass a statute in relation to the same business imposing additional burdens upon the company." (Page 697.)

Such a complete answer to the reasoning of the Iowa and Minnesota courts dispenses with the necessity for argument upon our part.

Moreover the fact of which those two courts say that they take judicial notice as to the practice of interchanging cars, a practice which they seem to think is universal and exercised *upon demand,* simply is not a fact. Of course, exchanges of cars are made very frequently; but they are made upon conditions and under circumstances which are regulated by contracts between the companies which make the exchanges, the companies always reserving the right to make such exchanges or not make them, as conditions may vary and as the interests and convenience of the several companies may require from time to time. In other words, railroad companies exercise over this character of property in this matter exactly the

same rights and powers which individuals exercise over their property, to-wit, *the right to use it themselves when their interests so require, or to permit others to use it when the interests of the owner will permit.*

In the case of Oregon Short Line v. Northern Pacific, 51 Fed. 465 (afterwards affirmed in 61 Fed. 158), Mr. Justice Field in holding that a railroad company could not be required even to *receive cars* from other companies, when it had cars of its own in which it could haul the freight, states the substance of a large amount of testimony of railroad men in that case on this subject of exchange of cars, and quotes quite at length from the testimony of the General Manager of the Northern Pacific Railroad, in which he said:

> "The method of handling through business exchanged between railroads is controlled by various circumstances; in some cases by traffic contracts which provide for cars going through without transfer or breaking bulk. In many cases it is controlled by conditions of what we might term the car market; that is, by the *car supply.* There are times when railroads east of St. Paul give orders at the transfer to permit none of their cars to go beyond St. Paul. There are times when they permit their cars to go through without breaking bulk. On the other hand, there are times when the railroads north and west of St. Paul do not take through cars, even when the roads tendering them are willing to have them go through, because they have sufficient of their own cars." (51 Fed. 471.)

In the case at bar the testimony is to the same effect as that just quoted. We have here the deposition of

Mr. Milton H. Smith, the president of the Louisville & Nashville Railroad Company, generally considered the ablest railroad man in the South, a man who has occupied at one time or another practically every position, either subordinate or superior, in the running and operation of railroads. Speaking on this subject Mr. Smith says:

> "The Louisville & Nashville Railroad Company and all other rail transportation lines have always reserved the right and are reserving the right to control the equipment belonging to the various companies. The management of all rail transportation lines reserve the right to say whether the equipment shall leave their own lines and go to others, or not. It is a matter of arrangement and agreement. Whenever the management deems it for the interest of the company that the equipment or any part of the equipment shall not leave its own lines, they so arrange. Not only that, but each management reserves the right to refuse to receive cars of connecting lines whenever they deem it for the interests they represent to do so. That, so far as I know, is the invariable rule and practice. * * * (Rec. 307, Ans. 5.)
>
> "In carrying out the determination of the management to control the movement of the equipment of any particular company or the management of the Louisville & Nashville Railroad Company the movement of the equipment of that company, it exercises discretion as to whether it will or will not permit its cars to go on to connecting roads. Under certain conditions of traffic this becomes a necessity; that is, it becomes necessary to refuse to let the L. & N.

cars leave the L. & N. tracks. Such conditions have existed for several years past, and now exist, which are the result of congested conditions. The freight traffic being moved and offered for movement throughout the country, or a very large part of it, is at the present time, and for a long time past has been, largely in excess of facilities. The Louisville & Nashville Railroad Company originates, or there originates on its lines, a much larger tonnage for points on connecting lines north of the Ohio River than originates on such lines for points on the L. & N. road. The result is a movement of empty cars south-bound. The traffic of connecting lines north of the Ohio River being largely in excess of facilities, such lines have had to refuse to give the L. & N. Railroad an empty car in exchange for a loaded one, or an exchange of car for car, or refuse to furnish the L. & N. road an empty car into which to transfer the load. *Should the L. & N. Railroad Company permit its cars under existing circumstances to go on to connecting roads for the purpose of taking the traffic to destination its line would soon be stripped and it would be unable to perform its duties as a common carrier between points on its own line.*" (Rec. 307, Ans. 6.)

Then after stating the conditions existing at several particular points and after stating that there are nearly always car balances in favor of the Louisville & Nashville Railroad Company in the accounts between it and its connecting lines, Mr. Smith says:

"Notwithstanding this, the L. & N. is unable to furnish sufficient equipment to accommodate all its

patrons, and, as stated before, is still compelled to refuse to receive certain traffic on some of its Southern connections. Any attempt on the part of the L. & N. R. R. Co. to supply equipment for the whole United States, Canada and Mexico would, of course, be futile. Anything that we could do would not amount to a drop in a bucket of water. I believe the railroads in the United States own about a million and a half of cars. The L. & N. has about 26,000. If we had 100,000 it would not enable it to furnish at the present time for all traffic moving from points on the L. & N. road to points on its connections." (Rec. 303, Ans. 6.)

Being asked specially as to the Louisville & Nashville Railroad Company's practice with particular reference to live stock cars, Mr. Smith says:

"The rules and regulations governing the exchange are varied according to conditions. Box cars are much more universally interchanged than other classes of cars. What we call coal cars or gondolas are especially retained on our lines. As a rule we do not permit that class of cars to go on to connecting lines north of the River at Cincinnati or Louisville or Evansville. The same is true of stock cars. Our stock cars we try to keep on our own line and we do not usually let them go off the line, except on some special arrangement or under special condition. It is a matter that is left to the discretion of the management and in which the management exercises and necessarily exercises discretion." (Rec. 309, Ans. 8.)

Asked as to whether or not, when it comes to the case of terminals and of freight which has reached the city of its destination, the rule changes as to the discretion which a company exercises concerning interchange of cars with connecting lines, Mr. Smith says, "It does not; discretion is still exercised, not only by the L. & N. Railroad, but by all other roads." He then gives several illustrations showing how sometimes a railroad company will allow its cars to be switched on to the lines of other roads for delivery purposes, and sometimes it will not, depending on the conditions existing. (Rec. 309, 310, Ans. 13.)

Mr. Smith was very extensively cross-examined by counsel for the Stock Yards Company on this subject of cars and permitting his equipment to go off his own line, and as to whether or not there is a difference between turning a car over to another company for general transportation purposes and turning it over for delivery purposes, and he makes the very pertinent response that if a car is turned over nominally for mere delivery purposes, it is nevertheless put into the possession of another railroad company, and that company has the power to take that car where it will, and the owner has only a right of action against the receiving company in case it fails to return the car; but in the meantime the owner is without the use of the car when it may be most material that it should have it.

Again reference was made to the fact that there is what is called a set of "per diem rules" existing between the railroad companies regulating the amount to be paid for the use of cars of one company by another company, but Mr. Smith calls attention to the fact that these are not rules requiring one railroad company to give up its cars to another, but simply rules fixing compensation

and making other regulations where one car is voluntarily given up to another. Speaking of different rules that have existed in Louisville on this subject Mr. Smith says:

> "There has been for many years a certain basis for compensating a road for the use of its cars on another road when it allowed its cars to go off on another road, but there has never been a rule or regulation *requiring* a railroad company to permit a car to leave its own tracks without its consent." (Rec. 334, Ans. 136.)

This is the testimony of Mr. Smith, the president of the Louisville & Nashville Railroad Company; and it is without contradiction in this record.

Plaintiff took the depositions of certain witnesses who were interrogated to some extent along these lines, but not one of them testifies that any railroad company has ever admitted the right of a shipper or any one else to *demand* a delivery of the cars of the initial company to another company either for general transportation purposes or delivering purposes. Without exception these witnesses say it is a matter of discretion and arrangement between the railroad companies. Thus Major Fitzgerald, assistant general freight agent of the Southern Railway, after having spoken of the custom of interchanging cars, was asked this question on cross-examination:

> "That is a matter, however, upon which the railroad management exercises a discretion, is it not?" To which he answered: "Yes, I should think it would be." (Rec. 260, Ans. 66.)

So with Mr. Philbrick, superintendent of the Illinois Central Railroad Company, after he had testified about the custom of interchanging cars, he was asked the following questions on cross-examination:

"Do I understand you to say that the Illinois Central Railroad Company recognizes the right of any shipper anywhere to demand that, when the Illinois Central gets that car to its destination, it shall deliver its car over to a connecting carrier to be hauled by the connecting carrier or *delivered* by the connecting carrier whether the Illinois Central wants it thus done or not?

"A. I don't think that question was asked.

"43. It does not concede any such right, does it?

"A. The Illinois Central Railroad conforms to the general practice in such things, but I don't think that question was asked at all.

"44. There is no general practice, is there, by which railroad companies concede the right of shippers to demand that the railroad company carrying the freight shall deliver its own cars to other railroad companies, either for the purpose of transporting *or delivery*, whether it suits the first railroad company or not?

"A. There is no such practice.

"45. No such custom?

"A. No such custom as that.

"46. For instance, going into the city of Memphis, if some shipper over the Illinois Central Railroad would demand of it that when it got that freight to the city of Memphis the Illinois Central would turn the car containing the freight over to some connecting road to be delivered by the connecting road, would the Illinois Central Railroad Company concede the right of the shipper to make that character of demand?

"A. Those things are handled between railroads.

"48. Do you mean by agreement between the railroads?

"A. Yes, sir." (Rec. 293, Ans. 42 to 48.)

It is true these witnesses speak of the custom of interchanging cars and of allowing the cars of one company to be delivered by another company; and, undoubtedly, this is very often done. It is very often to the interest of the company hauling the freight to have it delivered in its own cars over the tracks of some connecting road at the point of destination. The shipper of the freight may make it a condition that it shall be delivered in the original car before he will agree to ship by that road; and the company may be very glad to agree thus to deliver it. It may suit the convenience of everybody to do it. But not one single witness called by the plaintiff would state that this was a matter of absolute right or that it was handled otherwise than *according to the discretion of the railroad owning the car.*

In other words, that which the Supreme Courts of Iowa and Minnesota seemed to think they took judicial notice of, to-wit, that one railroad recognized the right of a shipper to demand that it deliver its cars containing his freight to another railroad, is not a fact at all; and the court can not make a fact out of what is not a fact by declaring that it takes judicial notice of it. The railroad companies exercise their right of property with reference to cars just as other persons exercise their right of property with reference to other kinds of property, to-wit, by using it for the purposes of the owner in the carrying on of his regular business, according to

the needs of the business, using it himself where the needs of his business require it, or allowing others to use it for compensation where the needs of his business will permit.

Reference has been made to the case of Michigan R. R. Co. v. Smithson, 45 Mich. 212, as being a case supporting the proposition that a railroad company can be required to deliver its cars to another. That case involves no such proposition. That was a case where the Michigan Central was sued for personal injuries by a brakeman, the complaint being that the employe had been injured by a defective car which had been received from a connecting line. The court, in discussing that case, simply held that the statute in Michigan required the defendant to *receive and haul* the cars of other lines. There was no statement or suggestion in the opinion on the subject of the duty of one railroad company to deliver its cars to other lines.

We therefore repeat the statement heretofore made that, with the exception of the case at bar, we have not been able to find, and we do not believe there exists, another case where a court has required a railroad company to deliver up its cars to another company for the purposes either of switching and delivering or for purposes of more lengthy transportation.

The Court of Appeals in this case simply adopts the reasoning of the Iowa and Minnesota Courts heretofore quoted, where, in discussing these general questions, they treat the matter of interchange of cars as one of general practice, and seem to think that the Legislature or a Constitutional Convention can require a railroad company to do anything which the railroad company may voluntarily do, a proposition which, as we have seen, this court has absolutely denied.

The language of Judge Barker in his dissenting opinion in the present case is so strong and so clear on the subject now under discussion that we feel we can not present the subject any more forcibly than by quoting his words. After stating in a most forcible way that in his judgment the section of the Constitution under consideration was never intended to require, and should not be construed as requiring, one railroad company to give up its cars to another, he then considers the question of validity of the requirement if the section be thus construed, and on this subject says:

> "I presume it will not be questioned that the cars are the private property of the owner within the meaning of the Federal Constitution, and that it is only necessary therefore to ascertain whether the judgment under discussion is a 'taking' within the meaning of the due process clause of the Fourteenth Amendment.
>
> "I do not believe that if the Southern Railway should take the cars of the Louisville & Nashville Railroad without the judgment of the court, and do with them just what it does under the judgment, anybody would doubt that that was a wrongful taking of property for which the owner could at once institute an action at law either to recover the property itself or damages for its wrongful conversion. The effect of the Constitution, as embodied in the judgment, on the property of the Louisville & Nashville Railroad produces the precise result so far as the loss is concerned that would take place if the Southern Railway should take it on its own initiative. The Louisville & Nashville Railroad is deprived of

its property to the same extent in each case. It must then be true that the judgment of the court, enforcing the constitutional provision under discussion, is a taking of the property of appellant within the meaning of the due process clause of the Federal Constitution. * * *

"McGehee in his work on Due Process of Law, p. 291, thus states the requirements of a taking within the meaning of the Constitution:

" 'According to the broad and equitable doctrine of modern cases it is not necessary to constitute a taking of property for public purposes that the actual occupancy or possession of the property should be assumed and its title acquired. A physical interference with property which substantially abridges the owner's right to use and employ it, and to exclude others from its use, takes his property to just the extent that he is deprived of its enjoyment. A serious interruption to the common and necessary use of property has been said to be equivalent to taking it within the constitutional provision, and it is not necessary that the land be absolutely taken.' * * *

"The case of Missouri Pacific R'y Co. v. Nebraska, 164 U. S. 403, involved this question: Under the Constitution and a statute of Nebraska, the effect of which, as construed by the State Court, fully authorized what was done under them, the railway company was required to permit certain private parties to build grain elevators on its right of way, which it was not using at the time; it also appeared that others had been permitted to build elevators on the right of way near the railroad tracks. On writ

of error to the Supreme Court of the United States, the question arose as to whether or not this was a taking of private property without due process of law. In the opinion it was said:

" 'This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation for the private use of the petitioners. The taking by a State of the private property of one person or corporation without the owner's consent for the use of another, is not due process of law, and is a violation of the Fourteenth Article or Amendment of the Constitution of the United States.' (Citing authorities.)

"To the same effect is State of Minnesota v. Chicago, etc., R. Co., 36 Minn. 402.

"In the case of Chicago, Burlington, etc., R. v. Chicago, 166 U. S. 266, it was said:

" 'It is proper now to inquire whether the due process of law enjoined by the Fourteenth Amendment requires compensation to be made or adequately secured to the owner of property taken for public use under the authority of a State.'

"Then, after reviewing a great number of authorities bearing on the question, the court concluded:

" 'In our opinion a judgment of a State Court, even if it be authorized by statute, whereby private property is taken for the State, or under its direc-

tion for public use, without compensation made or secured to the owner is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument.' (Citing authorities.)

"From the foregoing authority the rule is deduced that in order for a State to take private property for public use consistently with the due process clause of the Federal Constitution *it must establish a mode of ascertaining the damage and providing for payment to the owner.* If this is not done the statute is void. * * *

"In the case of Central Stock Yards Co. v. Louisville R. Co., *supra,* on the question we have in hand the Supreme Court said:

" 'On the other hand, if the cattle are to remain in the defendant's cars it can not be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant or require it to make one.'

"It seems to me to require no argument to show that the net result of the court's action in this case is to take the property of the appellant and give it to the Southern Railway. That after it is so given the Southern Railway may use it as long as it chooses, perhaps destroy it in a railroad wreck, and leave the owner with only an action at law to recover its property, or its value, taking the chance of the Southern Railway being solvent. After being unloaded it is easy to see that these cars, instead of being returned,

may be put in use by the Southern Railway, carried out of this State, and therefore beyond the jurisdiction of this court or any court of Kentucky. If the Southern Railway desires cars of the Louisville & Nashville Railroad, it now has an endless chain, through the operation of the opinion of this court, with which it can draw from it all of the rolling stock that it needs, leaving the denuded corporation, perhaps, unable to perform its duty to the public or to earn dividends for the stockholders. In other words, it is not going beyond the language of conservatism to say that it is entirely within the power of the Southern Railway, considering the general shortage of cars existing all over the country, to bankrupt the Louisville & Nashville Railroad by taking its cars under the order of this court, leaving it with only a claim for their rental at a sum which may be entirely nominal. *The rate fixed for the rental of a railroad's surplus cars affords no just criterion by which to gauge the loss of those necessary to perform the business for which it was chartered.*" (R. 498-501.)

We call the court's particular attention to one sentence in Judge Barker's opinion just quoted, in which, after referring to authorities, he says:

> "From the foregoing authority the rule is deduced that in order for a State to take private property for public use, consistently with the due process clause of the Federal Constitution, *it must establish a mode of ascertaining the damage and providing for payment to the owner. If this is not done the statute is void.*"

This proposition is fully supported by the opinion of this court in Chicago, Burlington & Quincy R. Co. v. Chicago, 166 U. S. 226, 240, in which the court in an opinion by Mr. Justice Harlan quotes with approval the language of Judge Cooley on this subject, saying:

> "In his discussion as to the meaning and scope of the Fourteenth Amendment, the same writer, in his edition of Story on the Constitution, after observing that every species of individual property was subject to be appropriated for the special needs of either the State or National Government, but that the power to appropriate was subject to the restriction, among others, that it must not be exercised without making due compensation for whatever is taken, says:
>
> " 'Due process of law requires, first, *the legislative act authorizing the appropriation, pointing out how it may be made and how the compensation shall be assessed;* and, secondly, that the parties or officers proceeding to make the appropriation shall keep within the authority conferred, etc.' "

Now, if this principle be true, it is immediately apparent that the Constitution of Kentucky, in requiring the cars of one company to be delivered up by it to another company, utterly fails to meet this requirement of due process of law. There is absolutely no provision in the Constitution either for fixing or paying or securing the compensation that is to be made to the owner of the cars for their use. Furthermore, as truly pointed out by Judge Barker, the simple use of the property is not

all that the owner of the property risks, he risks the loss of the car itself; it may be injured or totally destroyed; it may be lost and never returned. And the Constitution makes absolutely no attempt at provision for protecting the owner against such contingency, which is by no means a remote one. It is perfectly manifest that this was not intended by the State of Kentucky to be an exercise of the power of eminent domain, and not being so intended, there was no effort made to meet the constitutional requirements of the exercise of such a power. The real truth is that this section of the Constitution was never intended to require the delivery of cars from one company to another. As this court has said, and as Judge Barker says, the most it ever contemplated was to require one company to *receive the cars of another and haul them,* although the majority of the Court of Appeals have reached a different conclusion.

The language of the Supreme Court of Minnesota in the case referred to by Judge Barker, to-wit: State of Minnesota v. Chicago, etc., R. Co., 36 Minn. 402, is peculiarly strong. That was a case somewhat like the case of Missouri Pacific v. Nebraska, 164 U. S. 403. A statute of Minnesota provided in effect that every railroad organized under the laws of that State should upon application permit any person, for an annual rental of one dollar, to construct and operate an elevator at any of its regular way stations to be used for receiving and handling grain, and that such permission should be given without discrimination, etc. This statute was attacked as unconstitutional, and it was so held by the Supreme Court of Minnesota. In its opinion on the subject, the court, after referring to the plain intent and purpose of the statute, said:

"Taking that to be the intent of the section, the question presented to us, to-wit, the constitutional requirement, is very simple. The lands acquired by a railroad company for purposes of its enterprise are, so far as the right of property is concerned, private property. If purchased, the company pays for them; if taken in the exercise of the right of eminent domain, it pays the compensation to the owner. They are purchased or taken and held for a public purpose—a public use. Otherwise they could not be taken under the right of eminent domain. They are charged with a public duty, which the company, in consideration of the rights and powers conferred on it by the State, assumes to perform, and which the State can compel it to perform. But such public use is specific, not general; and, when required for any other public use, the land must be taken for the purpose and in the same manner as the lands of any private owner are taken; that is, through the right of eminent domain. The ownership being private, there being a private interest in them, they can not in any manner, nor on any pretext, be taken for a private use without the consent of the owner. Nor can they be taken for a public use without making just compensation. Such compensation can not be fixed by the State, but to determine it the State must provide an impartial tribunal before which both parties may meet and discuss their claims on equal terms. Lankford v. County of Ramsay, 16 Minn. 373, 375.

"These are elementary propositions not disputed on the part of the State. On its part it is conceded that if the section authorizes a 'taking' within the

constitutional meaning of the term, the section can not be sustained. *And this is undeniable, for the act makes no provision for ascertaining or making just compensation as required by the Constitution.*

"That that which the section contemplates is a taking, if any thing can be, hardly admits of argument. When it put A, without the consent of the company, into possession of a portion of its land, with the right of exclusive control, use and occupation, and ousts the company therefrom, depriving it of all control and use of it, the land is pretty effectually taken from the company and conferred upon A. It is of no moment that whatever title the company originally acquired is nominally left in it. Commonly when private land is taken for public use, nominal title is left in the owner, the right to use it for a particular public purpose only being taken. But that does not justify the taking without just compensation.

"It is, however, contended that the section aims merely at *regulating the public use* for which the land was originally taken. By that taking the company acquired and paid for the exclusive right to possess and employ the land in that public use. Such right can not be taken from it, except through the exercise of the right of eminent domain, or through forfeiture. *The section does not attempt to control or direct the company in its use of the land, but to exclude it from such use and confer the right to employ it in a similar use upon another.* It must be apparent that the amount of land to be taken does not affect the principle. If the State can take any of the lands, it can take all; if it can put another per-

son or corporation into possession of so much of the company's land as is necessary to construct and maintain an elevator or warehouse, it can put another corporation into possession of so much of its land as may be necessary to construct and maintain another railroad. Indeed, if it can, *under pretext of regulating the use*, oust the company from any other part of its property, however unimportant, no reason can be given why it may not, as a regulation, oust it from its right of way, yards, depot grounds, tracks and station, and put other parties in possession of them, for it holds and employs all of these for public use.

"So far as the section requires railroad companies to let other persons into possession of any portion of their land without the compensation required by the Constitution, it is invalid." (Our italics.) (Pages 404, 405.)

Much of the language of the court in this opinion is strikingly applicable to the case at bar. The section of the Kentucky Constitution under consideration, as construed by the courts of Kentucky, does not simply require a certain use of the company's property by the company itself, but it provides for taking the property of the company and putting it into the possession of another to be used by the latter. Moreover it does not provide at all for making any compensation for such use by the latter company, nor the giving of any character of security, either for the use or for the return of the car, or for paying for its value in case of destruction or loss. As it makes no provision for such compensation, of course it makes no provision for any tribunal to fix the amount

of such compensation, nor for any method of fixing the same. It is not a regulation for the use of property by the owner for public use, but is a taking of property from the owner and turning it over to another for use by the latter, without any payment or security, either for its use or its safe return.

We therefore submit that accepting the construction of Section 213 of the Kentucky Constitution placed upon it by the Court of Appeals of Kentucky, to the effect that it requires one railroad company to deliver up its cars to another company, to be used by the latter company either for delivery or general transportation purposes, it is a taking of property without due process of law, and is forbidden by the Constitution of the United States.

TAKING THE USE OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY'S TERMINALS, AND REQUIRING IT TO ACT AS A TRANSFER COMPANY.

We come now to the last part of this case, to-wit, to the claim by the plaintiff in error, the Louisville & Nashville Railroad Company, that it is deprived of its property without due process of law in being compelled practically to devote its terminals, including its terminal tracks, to the use of other railroad companies, and in being required itself to act practically as a mere transfer company in the city of Louisville. This question arises under that part of the judgment which requires defendant to switch or transfer cars from the Central Stock Yards around to the Bourbon Stock Yards.

In Atlantic Coast Line v. North Carolina Corporation Commission, 206 U. S. 1, where the Atlantic Coast Line had been required by the Commission to put on a certain train on part of its road in North Carolina, this court, in an opinion by Mr. Justice White, said:

"All the assignments of error challenge the correctness of the decision below on the ground of its repugnancy to the due process or equal protection clauses of the Fourteenth Amendment. The elementary proposition that railroads, from the public nature of the business by them carried on and the interest which the public has in their operation, are subject, as to their State business, to State regulation, which may be exerted either directly by legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine. Accepting this general rule, the assignments of error rest upon the hypothesis that the order which the court below enforced was *so arbitrary and unreasonable* in its character as to transcend the limits of regulation and to be in effect a denial of due process of law or deprivation of the equal protection of the law.

"As the public power to regulate railways and the private right of ownership of such property coexists and do not the one destroy the other, it has been settled that the right of ownership of railway property, like other property rights, finds protection in constitutional guaranties, and, therefore, wherever the *power of regulation* is exerted in such *an arbitrary and unreasonable way* as to cause it to be in effect not a regulation, but an infringement upon

the right of ownership, *such an exertion of power is void* because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. The result, therefore, is that the proposition relied upon is well founded if it be that the order which the court below enforced was of the arbitrary and unreasonable character asserted." (Our italics.) (Page 19.)

Again, in the case of Wisconsin, etc., Railroad Company v. Jacobson, 179 U. S. 287, the court, speaking through Mr. Justice Peckham, said this:

"Taking the facts which we have already enumerated into consideration, we think there is no justification furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error. In so deciding, we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional right of one or the other or possibly of both such corporations. It would depend upon the facts surrounding the cases in regard to which the judgment was given. *The reasonableness of the judgment with reference to the facts surrounding each case must be a material, if not a controlling factor, upon the question of its validity.* A statute, or a regulation provided for therein, is *frequently valid or the reverse, according, as the fact may be, whether it is a reasonable or an unreasonable exercise of legislative power over the subject-matter involved.* And in many cases questions of

degree are the controlling ones by which to determine the validity, or the reverse, of legislative action." (Page 301.)

Again, in the case of Martin v. District of Columbia, 205 U. S. 135, the court, in an opinion by Mr. Justice Holmes, said:

"Constitutional rights, like others, are matters of degree." (Page 139.)

The foregoing cases assert the principle which we ask to have applied to the facts now immediately under discussion. Section 213 of the Constitution of Kentucky has been construed by the courts of Kentucky in this case as practically requiring the Louisville & Nashville Railroad Company to devote its costly terminals in the city of Louisville, which were acquired for the handling of its regular railroad traffic, to mere *transfer* purposes between points within the city, and to devote its own service to that business, without regard to the effect it may have on the regular railroad business of the corporation. We can not better explain this situation than by quoting somewhat at length from the testimony of Mr. Smith, the President of the road, which is absolutely uncontradicted in this record. On direct examination he was examined and testified as follows:

"16. Is the Louisville & Nashville Railroad Company a transfer company?

"A. It is not.

"17. Then, for what purpose did it acquire these various tracks within the city of Louisville called terminal tracks?

"A. The so-called terminals of the Louisville & Nashville Railroad Company in the city of Louisville and at other points were created *for the purpose of promoting and facilitating traffic between points on and reached by its lines as a common carrier;* to facilitate the convenience of patrons and to facilitate receiving and delivering of traffic, and in that way create traffic, for the purpose of the revenues to be derived by transporting it over its line.

"18. How does that operate to attract business to a railroad company?

"A. The creation of convenient terminal facilities is part of the general scheme of furnishing facilities for transporting property between distant points. If you do not have a place to receive and care for property you could not handle it with celerity or satisfaction, which would tend to discourage business. (Rec. 311.)

"20. If the Louisville & Nashville Railroad Company can be compelled to switch cars from industries on its terminals to connections with other roads, or from the connections with other roads to industries on its terminals, what would be the effect of that?

"A. The effect of such practice would be to deprive the L. & N. Railroad Company of revenue that it is legitimately entitled to in transporting property from points on its terminals to points on and reached by its line, *its terminals being created for the purpose of promoting traffic between such terminals and such points on and reached by its lines.* The result would, therefore, be, as I say, a deprivation of the large revenue to which it is legitimately entitled; and, in addition, it would be compelled to do a switching business for a nominal consideration, for a consideration that is very much

less than the cost of the service. It will readily be seen that with the terminals of the Louisville & Nashville Railroad Company, if it only received a switching charge of one or two dollars per car for the service of moving cars between points on such terminals and points of interchange with connecting lines in the city of Louisville, the revenue derived would be but a very small part of the interest on the cost of the property, and the cost of maintenance and operation. It will, therefore, render the service for practically nothing, and at the same time would deprive the L. & N. Railroad Company of a large amount of revenue which it is legitimately entitled to and *for which purpose such facilities were created.*" (Rec. 312.)

"23. If the Louisville & Nashville Railroad Company were required to switch and transfer on its terminals all freight coming to the city of Louisville from other lines, or going out of the city of Louisville over other lines than the L. & N., would or not that practically give to all of those other lines the benefit of the terminals of the Louisville & Nashville Railroad Company?

"A. If the Louisville & Nashville Railroad Company is required to receive loaded cars from all connections, loaded with property to be delivered to different industries, warehouses, etc., on its lines in the city of Louisville, or required to receive cars loaded at such industries, warehouses, etc., for delivery to points of interchange with competing lines in the city of Louisville, for the nominal remuneration of $1.00 per car, the value of the terminals of the Louisville & Nashville Railroad Company would be very greatly reduced *and the value of its main lines would be very materially reduced* by the fact that a large amount of traffic could in that way be di-

verted from this line to competing lines. The arrangement would be a most inequitable one. As an illustration, some years ago the Louisville Southern Railway, having been completed from the city limits near Twelfth and Magnolia Avenue to Burgin, the point of connection with the Cincinnati Southern road, and by those connections entered into a contract to transport a large amount of lumber from a point in southern Georgia to be used in the construction of a cotton mill on the L. & N. road. To secure it, it contracted to transport it at a reduced rate, thus diverting the traffic from the L. & N. road and controlled lines, a distance of 474 miles. It brought the property to Louisville, using the K. & I. Bridge tracks, and undertook to deliver it to the Louisville & Nashville to be switched to the site of the cotton mill for $1.00 per car, which the L. & N. refused to do. *The terminals of the L. & N. Railroad Company had cost more than the total cost of the Louisville Southern Railroad, yet in that way the Louisville & Nashville Railroad Company was to be deprived of the benefits it expected to derive from the creation of such facilities and large expenditures made.*" (Rec. 313.)

On cross-examination, Mr. Smith was examined and testified as follows:

"103. The only object, then, if I understand, in the policy adopted by your company is to make it a partnership, or in the nature of a partnership, with the parties on your line, and so operate the road as to better the interests of the Louisville & Nashville Railroad Company, regardless of the rights of the other people not on the Louisville & Nashville Railroad Company's line?

"A. The Louisville & Nashville Railroad Company endeavors to use its facilities located in the city of Louisville and elsewhere in a manner to promote the interests of the company. In promoting its interests it must necessarily promote the interest of its patrons, which it endeavors to do. It must, if it is continued to be a prosperous corporation, do everything in its power to increase its traffic, to encourage its existing patrons and to secure additional patrons. In doing this it must necessarily promote the interests of what, in this connection, we term the public; that is, shippers and consignees, the owners of property transported. In the opinion of the management, the Louisville & Nashville Railroad Company *is not required to use its facilities in which it has invested many millions of dollars and is almost daily investing large additional sums to increase and add to such facilities, to promote and protect the interests of competing common carriers,* such competing common carriers being in every way competent and able to protect their own interests, and such common carriers doing, as the Louisville & Nashville Railroad Company is doing, what they can to promote the interests of their patrons by increasing and adding to their facilities and increasing the traffic and in that way increasing their revenues." (Rec. 328.)

The cross-examination having turned to the branch of this case heretofore discussed, to-wit, the insistance by the Louisville & Nashville Railroad Company that when it brought live stock to Louisville it should be permitted to deliver the same at its own depot and that it should not be required to turn the same over in its cars to the Southern Railway to be taken to the Southern's depot, Mr. Smith was examined as follows:

"123. Is it not true that the controlling reason that the Louisville & Nashville has is that it wants it to go to the Bourbon Yards that it may have the revenue derived from hauling it away from there?

"A. Certainly.

"124. That is to their interest?

"A. Certainly it is. It is for the interest of the L. & N. Railroad Company. We are in that business to promote the interest of the Louisville & Nashville Railroad Company, and we can only do it by promoting the interest of our patrons. We furnish better facilities; if we can get a larger share of the business, if we can treat everybody a little better than anybody else, that is what we try to do, and do better by the public than any one else, that is the way we undertake to attract business.

"125. Every road tries to do the same thing?

"A. *That is what creates competition and is building up this country, but if you take our facilities and turn them over to competing lines after we have created them, if that is what they are for, we would never have created them.*" (Rec. 331.)

Again, in cross-examination, having been asked if certain railroads did not connect with the L. & N. west of a certain street in the city, Mr. Smith answered:

"A. All of them except the Chesapeake & Ohio and Big Four. There is shown the inequity of the demand being made upon us to deliver our cars to connecting roads. The Chesapeake & Ohio, the Big Four, the Monon and originally the Louisville Southern extended their lines just into the city of Louisville, just stuck their noses in. Their facilities are exceedingly limited, and it seems

to me nothing could better illustrate the inequity of requiring the L. & N. Railroad to turn over its extensive terminal facilities for the use of these companies who have not expended but a very small percentage of the money the L. & N. Railroad Company has expended in terminal facilities. The Louisville Southern originally ended at the city limits, and, as I say, came up and demanded the use of the L. & N. facilities at $1.00 per car. All a railroad has to do, if we were required to do that, is to build to some point connecting with the L. & N., then they need not worry about terminal facilities, they could simply transfer to the L. & N., and save the enormous investment and enormous expense of maintenance and operation. The Illinois Central is almost in the same fix. They have something, but not much. The Louisville Southern has acquired in some way control of what is known as the K. & I. Bridge property, and they have more facilities in that way indirectly in the western part of the city. The Pennsylvania Railroad Company has some along the line of Fourteenth Street out as far as Maple. *All of them together have not such facilities in the city of Louisville as the Louisville & Nashville Railroad Company, and what you are now requiring of the L. & N. Railroad Company is to turn all of the facilities of the L. & N. Railroad Company, as created at an expense of several million dollars, over to these competing lines, which is inequitable and unjust, even if it is legal."* (Rec. 333, A. 132.)

Another fact should be explained with reference to the character of this business which the Central Stock Yards seeks to force upon the Louisville & Nashville Railroad Company, to-wit, this switching or transferring of

stock from the Central Stock Yards around to the Bourbon Stock Yards. This is almost exclusively stock that has been sold *at the Central Stock Yards* to butchers and packers *living up near the Bourbon Stock Yards* in the northeastern part of the city, and is a mere delivery movement. Plaintiff has taken pains to show in the record that when live stock is brought into the city of Louisville by other railroads, *from other places,* which are not reached by the Louisville & Nashville Railroad, the Louisville & Nashville Railroad Company will switch such live stock to its live stock depot at the Bourbon Stock Yards; and the question is asked, why, then, when this live stock comes from the Central Stock Yards, is the Louisville & Nashville Railroad averse to switching the same to the Bourbon Stock Yards? The difference is this, and is explained by the explanation which Mr. Smith has given as to why these terminal facilities were acquired. When live stock comes into the city of Louisville from other places, whether over the Louisville & Nashville Railroad or any other railroad, and is landed at either the Bourbon Stock Yards or Central Stock Yards, very much the greater part of it is sold at these stock yards and then *goes out again from the city, still as live stock, to other places.* Mr. Watkins, the manager of the Central Stock Yards, himself said, speaking with reference to the Central Stock Yards, that from 60 to 75 per cent. of the stock sold at the Central Stock Yards goes East as live stock. (Rec. 228, Ans. 189.) Therefore, if this live stock is brought from the South or other parts of Kentucky and is delivered to and sold at the Bourbon Stock Yards, the chances are that that stock, or 75 per cent. of it, will go out of the city of Louisville to the East, *and will go over the lines of the Louisville & Nashville Railroad Company,*

which will therefore get *the benefit of the haul.* And in this way if the Louisville & Nashville Railroad Company receives such stock from another railroad company which has brought it to Louisville, and if the Louisville & Nashville does use its terminals in switching this stock from the transporting railroad to the Louisville & Nashville depot at the Bourbon Stock Yards, it is thus putting its terminals to the very use for which they were acquired, to-wit, the bringing of traffic to the Louisville & Nashville Railroad. But when stock is sold at the Central Stock Yards, and is bought by the butchers and packers of Butchertown, whose places of business are up near the Bourbon Stock Yards, and the Louisville & Nashville Railroad Company is compelled to switch this stock around to the Bourbon Stock Yards for delivery to these butchers and packers for home consumption, it is performing a purely *switching movement for local purposes,* transferring stock that *is not to go out of the city of Louisville,* but is simply to be butchered right here in the city, and from this, of course, the Louisville & Nashville Railroad Company *gets nothing, either directly or indirectly, except the simple switching charge;* and its *terminals are thus put to the use of mere transfer purposes, for the benefit of the Central Stock Yards and the Southern Railway, without any connection at all with the regular business of the Louisville & Nashville Railroad Company.*

The testimony of Mr. Smith heretofore quoted explains the meaning of the part of this case now under discussion and shows the court of what vast import it is to the Louisville & Nashville Railroad Company; for, if the Constitution of Kentucky is to be given the effect that has been given it, and is to be upheld as legal, and if the

Central Stock Yards Company, located in Louisville on the line of the Southern Railway, can require the Louisville & Nashville Railroad Company to perform mere transfer services, and use its terminals for the mere transfer service of switching this stock between two local points in the city of Louisville, then it will undoubtedly be claimed by every road entering the city, and by the owner of every industry located on any road entering the city, that the Louisville & Nashville Railroad Company can be required to devote its terminals and its services to the doing of a *mere local transfer business within the limits of the city of Louisville;* and thus, as Mr. Smith says, these terminal properties, which have been accumulated through the course of half a century and at the cost of vast sums of money on the part of the Louisville & Nashville Railroad Company, will practically be turned over to its competitors who, in the matter of the acquisition of terminals, have simply done nothing as compared with what has been done by the Louisville & Nashville Railroad Company. And, furthermore, if this is upheld there will undoubtedly be claims on the part of industries situated on these various terminals that the Louisville & Nashville Railroad Company shall operate as a transfer company, not simply for the purpose of transferring to its depot, but for the purpose of transferring from industry to industry by means of connecting roads, wherever carload lots are desired to be delivered, and thus save the trouble and inconvenience of transferring the same by wagons or drays or other similar means.

As shown by Mr. Smith, the terminals of the Louisville & Nashville Railroad Company in the city of Louisville are already congested; their capacity is taxed practically to its limit for the handling of legitimate Louis-

ville & Nashville Railroad business; that is, business either coming to or going from the city over the lines of the Louisville & Nashville Railroad; and to force it to turn over its terminal tracks to the public as transfer tracks, and to render to the public a transfer service with its equipment and its employes, is in substance and effect to take away its property from it for the purposes for which it was acquired, and is an *unreasonable and arbitrary exercise of power.*

We recognize, as said by the court in the cases already cited, that questions of constitutional right and power are to a considerable extent questions of degree; but this court has distinctly recognized and said that there is a limit beyond which the State can not go in imposing requirements upon railroad companies and in demanding certain uses of its property; and we submit that that limit has been passed in this case with reference to the branch of it now under consideration.

CONCLUSION.

In conclusion, therefore, we submit the following propositions:

(1) So far as concerns interstate shipments of live stock, the whole matter is concluded by the judgment of the Federal Court in the former litigation in Central Stock Yards Co. v. Louisville & Nashville Railroad Co., and that judgment is a bar to the relief sought in this case as to such interstate shipments.

(2) Section 213 of the Constitution of Kentucky, as construed by the Court of Appeals of Kentucky, in so far as it attempts to control interstate shipments, is an attempt to regulate interstate commerce, and is void.

(3) Section 213 of the Constitution of Kentucky, as construed by the Court of Appeals of Kentucky, in requiring plaintiff in error to deliver up possession of its cars to another railroad company, deprives the former of its property without due process of law, and is void.

(4) Section 213 of the Constitution of Kentucky, as construed by the Court of Appeals of Kentucky, in requiring plaintiff in error to devote its terminal properties in the city of Louisville to the use of other railroad companies, and to mere local transfer purposes, having no connection with the traffic of plaintiff in error, and in requiring plaintiff in error to perform the duties of a mere local transfer company in the city of Louisville, deprives it of its property without due process of law, and is void.

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Of Counsel.

April 15, 1908.

FILED.
DEC 9 1908
JAMES H. McKENNEY,
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 51.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
PLAINTIFF IN ERROR,
vs.
CENTRAL STOCKYARDS COMPANY, DEFENDANT IN ERROR.

REPLY FOR PLAINTIFF IN ERROR.

At two or three points in the brief for defendant in error counsel refer to the charter of the Louisville Railway Transfer Company (whose rights and properties have since been acquired by the Louisville & Nashville Railroad Company, plaintiff in error), and to a contract of June 3, 1870, between the City of Louisville and the Louisville & Nashville Railroad Company, and also the Louisville, Cincinnati & Lexington Railroad Company, and say in general, indefinite terms (without quoting the language of either instrument) that they require the Louisville & Nashville Railroad Company to do what the judgment herein requires.

It is only necessary to refer to the language of those instruments to see that this is an incorrect statement.

It is, however, proper to call the court's attention to the fact that neither this charter nor this contract is referred to,

directly or indirectly, in any pleading in the case. Defendant in error never at any time rested its claim to the service herein demanded on any alleged contractual obligation imposed by either of those instruments, but solely upon alleged duties imposed by the constitution and statutes of the State.

But even if the pleadings made the claim, there is nothing in it. The contract referred to and the charter of the Louisville Railway Transfer Company contemplated the building of a "connecting track" around the southeastern part of the city, from a junction "near the head of Jefferson street" with the Louisville, Cincinnati and Lexington Railroad, which entered Louisville from the *East*, to a junction "near the House of Refuge" with the Louisville & Nashville Railroad, which entered Louisville from the *South*. And each instrument provided that any shipper along the line of this connecting track might have a side-track connection with it, and thus receive and deliver car-load lots of freight. *But the Central Stockyards are not on this connecting track, and, of course, have no side track connecting with it.* What they are now demanding, and what the judgment requires, is that the Louisville & Nashville Railroad Company shall deliver its cars to *the Southern Railway*, in order that the Southern Railway may deliver them on *its* side track connecting with the Central Stockyards.

Furthermore, the uncontradicted testimony shows that, even as to persons located on the connecting track referred to, the contemporaneous construction of all parties in interest for more than thirty years has been that the provision as to side-track connections and deliveries referred only to *dead freight* and *not to live stock* (Deposition of M. H. Smith, questions and answers 153 and 154, Rec., 337).

HELM BRUCE,
Attorney for Plaintiff in Error.

Office Supreme Court, U. S.
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APR 13 1908
JAMES H. McKENNEY,
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No. 51.

Supreme Court of the United States

OCTOBER TERM, 1907.

Louisville & Nashville Railroad Company, - - - - - *Plaintiff in Error,*

versus

Central Stock Yards Company, . . *Defendant in Error.*

BRIEF FOR DEFENDANT IN ERROR.

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I.

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No. 268.

Supreme Court of the United States.

OCTOBER TERM, 1907.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - - - - - - - *Plaintiff in Error,*

vs. BRIEF FOR DEFENDANT IN ERROR.

CENTRAL STOCK YARDS COMPANY, - *Defendant in Error.*

STATEMENT.

This action is before this court upon a writ of error to the Court of Appeals of Kentucky. (Rec. pp. 554 and 555.)

The petition was filed November 4, 1901, and an amended petition was filed before answer November 11, 1901. (Rec. pp. 1 to 9, and 14 to 17.)

It appears from said pleadings that the defendant in error, Central Stock Yards Company, was and is a duly and legally authorized and organized corporation under the laws of the State of Delaware, and as such, from compliance with the Constitution and laws of the State of Kentucky, authorized to contract and be contracted

with, sue and be sued, in its corporate name, and construct and operate a general stock yards business in said State.

That the plaintiff in error, Louisville & Nashville Railroad Company, is, and was at the time mentioned in said pleadings, and has been for many years, a railroad corporation, created and organized under and by virtue of the laws of the State of Kentucky, with power, in its corporate name, to contract and be contracted with, sue and be sued, and to conduct and operate a steam railroad in and through Kentucky and elsewhere, with its chief office and terminus in Louisville, Kentucky; that it is, and has for many years been, operating and managing a railroad in Kentucky and other States, and as such is a common carrier of passengers and freight, and engaged in the transportation of passengers and property.

The Southern Railway Company in Kentucky is, and was at all the times in the pleadings mentioned, and now is, a duly created, organized, and operating railroad system in Kentucky under the laws of said State.

It further appears from said pleadings that defendant in error had, prior to the commencement of this action, constructed and had in operation a large and extensive plant just outside of, but within the switching limits of, the city of Louisville, and on the lines of the Southern Railway Company in Kentucky; and at said

time, and now, has a modern and well-equipped plant with the latest improved and best facilities, and with ample capital and premises for receiving, unloading, feeding, watering, caring for, weighing, and having sales made of live stock of every character and on the most economical basis; and that defendant in error, with the said Southern Railway Company in Kentucky, had, and now has, constructed over 4,000 feet of trackage connecting the said Southern Railway Company's system with the yards and plant of the defendant in error; that the defendant in error's plant is situated about nine miles from the terminus of the said Southern Railway Company's system in the city of Louisville, and that prior to the commencement of this action said Southern Railway Company had regularly established a station at the plant of defendant in error, which is known as Central Stock Yards, Kentucky, and that said Southern Railway Company, before the commencement of this action had, in due form, and in the usual and customary manner, given notice of the establishment of said station to all of its agents, and to all connecting railways or common carriers in Kentucky, including the plaintiff in error; and it further notified all of said railways and common carriers entering the city of Louisville that it, Southern Railway Company, would be, after November 1, 1901, and that it ever since has been, and is now, ready, willing, and able to accept at points of physical connection between its tracks and those of plaintiff in

error at Louisville, Kentucky, live stock of every character consigned to defendant in error, or to any person, firm, or corporation at Central Stock Yards, Kentucky; and further, that it, Southern Railway Company, would be, has ever since been, and is now willing to be responsible to such connecting common carrier for the delivery of all such live stock delivered to it at such points of connection and the collection of all charges on same, and would promptly return to such points of connection all empty cars.

It further appears that there are three points of physical connection between the tracks of plaintiff in error and the said Southern Railway Company in Kentucky at Louisville, at which the two railway systems have heretofore received and delivered, and are daily receiving and delivering each one to the other, and from the other, freight in car load lots or less for delivery to consignees on the track or tracks of the one or the other (see Rec. pp. 131 to 135 for capacity of interchange and trackage connection at said three points); that the lines of the plaintiff in error, Louisville & Nashville Railroad Company, extend through the principal counties in Kentucky wherein live stock is raised in any considerable quantity for sale; that more than fifty per cent of all the live stock raised in Kentucky can reach a market therefor only over the lines of the plaintiff in error; that plaintiff in error has announced its purpose to decline to receive, and has declined to receive

at any station on its line any live stock to be billed, transported, transferred, or switched to any connecting carrier, and particularly to the Southern Railway Company, at Louisville, Kentucky, for delivery by said Southern Railway Company within the switching limits of the city of Louisville to the defendant in error's yards, or to any person thereat, and that, in keeping with its said announced purpose, plaintiff in error has distributed circulars throughout the country and given instructions to all of its station agents and employes not to receive, bill, transport, transfer, or switch any live stock at any of the points of physical connection between its lines and those of the Southern Railway Company in Kentucky at Louisville, for delivery by the latter to the defendant in error or any one at its yards.

The business of the defendant in error is the operation of a modern, well-equipped stock yard plant for safely loading, unloading, caring for, watering, and feeding live stock, and for all such services so rendered by it to the owners of any and all live stock reasonable charges are made, and therein and thereupon its business is made to depend.

The pleadings allege that such action on the part of plaintiff in error was and is unlawful, arbitrary, and discriminating against defendant in error and other persons doing business with defendant in error, is of great injury to defendant in error, and that the injury so inflicted was and is of a continuous character, not sus-

ceptible of actual pecuniary estimation, and that resort to actions at law will involve a multiplicity of suits, none of which could or would end the litigation, and, therefore, the only adequate remedy is in equity and by injunctive process.

It further appears that when live stock is tendered to plaintiff in error, at any of its stations, for consignment to defendant in error, or to any person doing business at the plant of defendant in error, via Southern Railway Company in Kentucky at Louisville, plaintiff in error refuses to receive, bill, or transport the said live stock so destined, or to deliver the same to the Southern Railway Company at Louisville, or communicate to the Southern Railway Company the destination thereof, but in all of such cases plaintiff in error will only receive, bill, and transport the same live stock so tendered to it to Louisville, Ky., and when such consignment reaches the city of Louisville plaintiff in error refuses to recognize the right of the owner or consignee to change the point of delivery upon payment of full freight, or to deliver the same to the Southern Railway Company for delivery at defendant in error's plant, or to any person thereat, and refuses to give to the connecting common carrier (Southern Railway Company) the instructions of the owner and consignor of such live stock, but in all such instances, over the protest and objection of the owners of such live stock, plaintiff in error makes delivery thereof to the Bourbon Stock Yards Company,

in Louisville, Kentucky, a rival and competitor in business of defendant in error, and at a point distant several miles from the plant of the said defendant in error.

It will be seen from the foregoing brief outline of defendant in error's pleadings that this action is based upon Sections 213 and 214 of the Constitution of Kentucky, and Sections 818 and 819 of the general laws of Kentucky, which read as follows:

> "Sec. 213. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and despatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee, or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business.
>
> "Sec. 214. No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation, for the receipt, transfer, delivery, transportation, handling, care, or custody of any freight, or for the conduct of any business as a common carrier."

Sections 818 and 819 of the general laws of Kentucky of 1894, read:

"818. PREFERENCE OR ADVANTAGE FORBIDDEN—RULES DEFINING SAME QUANTITY OF FREIGHT. It shall be unlawful for any corporation to make or give any undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic, in any respect whatever, in the transportation of a like kind of traffic; or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage. . . .

"819. PENALTY AND DAMAGES FOR EXTORTION, DISCRIMINATION, PREFERENCE —JURISDICTION—DUTY OF COMMISSION—LIMITATION. Any railroad corporation that shall be guilty of extortion or unjust discrimination, or of giving to any person or locality, or to any description of traffic, an undue or unreasonable preference or advantage, shall, upon conviction, be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars; and, upon a second conviction, in any sum not less than five hundred dollars nor more than two thousand dollars; and, upon a third conviction, in any sum not less than two thousand dollars nor more than five thousand dollars. The Circuit Court of any county into or through which the line or railroad may run, owned or operated by the corporation alleged to be guilty as aforesaid, and the Franklin Circuit Court, shall have jurisdiction of the offense, which shall be prosecuted by indictment, or by action in the name of the Commonwealth, upon information filed by the Board of Railroad Commissioners; and such railroad corporation shall also be liable in damages to the party aggrieved to the amount of damages sustained, together with cost of suit and reasonable attorneys' fees to be fixed by the court. Indictments under this section shall be made only upon the recommendation or request of the Railroad Commission, filed in the court having jurisdiction of the offense; and all prosecutions and actions under this law shall be commenced within two years after the offense shall have been committed, or the cause of action shall have accrued."

The plaintiff in error by its several answers presented the following defenses:

First: That the shipper, and not the defendant in error, Stock Yards Company, is the party injured, if any one is injured, and that the Stock Yards Company can not, therefore, maintain this suit.

Second: That to require plaintiff in error to comply with the mandatory provisions of Sections 213 and 214 of the State Constitution would result in inconvenience to it, likewise delay in its handling of traffic, and expense in performing the switching duties required by the said Constitution.

Third: That it has heretofore established and furnished a sufficient live stock depot, known as the Bourbon Stock Yards, with sufficient facilities for the handling, feeding, and caring for of all live stock coming to the city of Louisville, and that it is not required to establish any other live stock depot in said city.

Fourth: That the requirement that it shall recognize the right of owners, consignors, and consignees to change destination *in transitu* would, in effect, be a regulation of interstate commerce, and violative of the Federal Constitution.

Fifth: That under its charter it is made unlawful for any other company or any person to travel upon or use any of its road, and that thereby a contract was created between the plaintiff in error and the State which is violated by the provisions of the Constitution.

Sixth: That to require of it the performance of switching duties as ordered by the court, in conformity with the mandatory provisions of aforesaid Sections 213 and 214 of the State Constitution, would be exacting switching duties by the performance of duties pertaining to a transfer company at a nominal charge, and less than the cost thereof, and would be the taking of property without due process of law, and contrary to the provisions of the Constitution of the United States, and particularly to the Fourteenth Amendment thereof.

Seventh: That to require of it the performance of switching duties, in accordance with the mandatory provisions of the Constitution of the State, would necessitate its parting with the possession and control of its cars into the possession of another and competing company, and in effect thereby deprive it of property without due process of law.

All of these defenses were held by the Court of Appeals of Kentucky to be unavailing and ineffective against the mandatory provisions of Sections 213 and 214 of the Constitution of Kentucky, copied *supra*.

The assignments of error (Rec. pp. 554 and 555) are six in number, but only present three questions, to wit:

FIRST: That the Court of Appeals of Kentucky failed and refused to give due, full, or any faith, credit, or effect to the judgments or decrees of the courts of the United States in the suit of Central Stock Yards Company v. Louisville & Nashville Railroad Company, which were specially pleaded and relied upon.

SECOND: That the recognition by the Court of Appeals of Kentucky of the doctrine or principle of stoppage *in transitu* was and is a regulation of interstate commerce; and

THIRD: That the requirement that it, plaintiff in error, give up or turn its cars over to the possession and control of the Southern Railway Company, even if only for delivery purposes by switching movement, was and is to make of plaintiff in error a transfer company and deprive it of its property without due process of law.

It is important here to bear in mind that much the greater part of the judgment of the Court of Appeals, now upon review, can not, under any conditions or circumstances, be affected by the prosecution of this writ of error, as the said judgment in the main and almost exclusively pertains to intrastate traffic.

The facts in the case are largely undisputed, and reference, therefore, to the testimony will be made in the discussion of the respective questions of law involved.

POINTS AND AUTHORITIES.

I.

THE PROVISIONS OF SECTIONS 213 AND 214 OF THE CONSTITUTION OF KENTUCKY AND SECTIONS 818 AND 819 OF THE GENERAL STATUTES OF KENTUCKY, AS CONSTRUED AND INTERPRETED BY THE COURT OF LAST RESORT OF SAID STATE DO NOT DENY TO THE PLAINTIFF IN ERROR ANY RIGHT OR PRIVILEGE SECURED TO IT BY THE INTERSTATE COMMERCE ACT OR FEDERAL CONSTITUTION.

The right of this court to review the judgment of the Court of Appeals of Kentucky depends upon the proper assertion of a right or privilege under the Federal Constitution or statutes, which was denied to the plaintiff in error by the judgment in question.

It is claimed that the requirement by the judgment that plaintiff in error turn over its cars loaded with live stock to the Southern Railway Company for delivery purposes and to be transported by it to the defendant in error, and at a depot on the lines of the Southern Railway Company, although within the switching limits of the terminal city (Louisville, Ky.), to be there unloaded, without requiring the Southern Railway Company to pay for their use, and without any definite provision for their return, is taking private property in violation of the

Constitution of the State of Kentucky and the Federal Constitution.

The claim, as made, is very much broader than can be justified by the facts within the record, upon which the decree complained of was entered. It is further claimed that what a railroad company may choose voluntarily to do furnishes no criterion for the measurement of the power of Kentucky by constitu'ional provision or legislative enactment. (Lake Shore, etc., R. R. Co. v. Smith, 173 U. S. 697.)

The testimony in this record shows, however, that when the cars of plaintiff in error, loaded with live stock, are turned over to the Southern Railway Company for delivery purposes, and to be transported and delivered to the defendant in error at a point within the switching limits of the city of Louisville, that same is not without a requirement that the Southern Railway Company shall pay for their use, nor without a distinct provision for their return.

The testimony of Mr. H. B. Spencer, general manager of the St. Louis-Louisville Lines, Southern Railway Company, and that of Mr. T. C. Powell, assistant freight traffic manager of the Southern Railway Company and Southern Railway Company in Kentucky (Rec. pp. 267 to 271 and 282 to 286), and the testimony of Mr. M. H. Smith, president of the plaintiff in error (Rec. pp. 306 to 338), all show that there was at the times mentioned in the pleadings and record, and there is now existing between

all of the principal railroad companies of the country, and between the Louisville & Nashville Railroad Company, plaintiff in error, and the Southern Railway Company, a general code of rules called "The American Railway Association Code of Per Diem Rules Governing the Handling of Freight Cars by These Companies," in and by which it was provided and agreed as follows:

> "Effective July 1, 1902, the settlement for the use of freight cars belonging to railroad companies, will be made on a basis of stipulated amount per day, instead of on a mileage basis, in accordance with the following rules, adopted by the American Railway Association, April 24, 1902. * * *

PER DIEM RULES.

GOVERNING SETTLEMENT FOR THE USE OF FREIGHT CARS.

"1. The rate for the use of freight cars shall be 20 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate.

"2. Days shall be reckoned by subtracting the date of receipt from the date of delivery.

"A road which receives and delivers a car on the same day shall not pay the per diem for that day.

"3. A road shall have the right to demand the return of its car after it has been twenty days consecutively on any road. If the car is held by that road more than ten days after the date of such notice, making thirty days in all, thereafter a penalty rate of 80 cents per day in addition to the per diem rate shall be paid by such road for the further use of that car.

"4. All railroads, including ferry lines, shall be responsible to the car-owner for amounts accruing for the use of a car at the established rates, whether

such car is in road service or switching service, until the car has been delivered to the owner or to another road.

"5. An arbitrary amount for each car in switching service may be reclaimed by the switching line from the road for which the service was performed. This amount shall be based upon the average number of days actually required, and determined by the road directly interested for each local territory." (Rec. pp. 410 and 411.)

Particular attention is called to the following instructions:

"Rule 1. As these companies are obliged to pay for foreign cars on a per diem basis, the necessity for expeditious handling is apparent. Every effort must be made to dispose of foreign cars promptly and economically; the more promptly they are handled, the more economical it will be. It must be borne in mind that every day's delay will be so much additional expense. A foreign car belonging to a per diem road must be given preference in handling in accordance with existing instructions. (Rec. p. 413.)

"Rule 5. At all junction points where switching service is performed, one road for another, a mutual agreement will be made between the lines interested, allowing an arbitrary number of days in which to perform the switching; a copy of which agreement will be furnished agents interested. A permanent record must be kept of this service and a monthly statement rendered within five days after the close of each month, to the Car Accountant, showing initials and numbers of all cars switched for each road; the correctness to be certified to by the agents of the respective lines." (Rec. p. 414.)

See full Code of Rules, Rec. pp. 411 to 422.

It is claimed, however, by the president of the plaintiff in error, that the matter of interchange of cars be-

tween railway systems for any purpose, and particularly cars containing live stock, is left to the discretion of the management. (See Rec. p. 309.)

It was, however, admitted in the deposition of Mr. M. H. Smith, president of the plaintiff in error, that the per diem rules were at the time of his testifying, and had been for many years theretofore, and now are, in existence between the principal railway systems of the country, and particularly between the plaintiff in error and the Southern Railway Company, providing for the interchange of cars as in the said rules above mentioned.

It is further claimed by plaintiff in error, through its president, Mr. M. H. Smith, that the terminals of the Louisville & Nashville Railroad Company at Louisville, Ky., were created and should be exclusively used to create traffic over the lines of the said Louisville & Nashville Railroad Company, and that the general public and citizens of Kentucky who did not exclusively use the lines of the Louisville & Nashville Railroad Company were not entitled to any consideration from it.

In other words, the bold claim is made by the plaintiff in error, through its president, that the Louisville & Nashville Railroad Company, though created by the State of Kentucky, owes its first duty to itself, and absolutely no duty to the public, unless in the performance of such duty to the public it furthers its selfish end of gain.

It is further claimed by the president of the plaintiff in error, Mr. M. H. Smith, that the reason for its con-

duct, complained of herein and condemned by the court of last resort of Kentucky, was and is that when live stock, having Louisville, Ky., as its destination, reaches its live stock depot, the Bourbon Stock Yards at Louisville, Ky., that it (Louisville & Nashville Railroad Company) can, in any further movement thereof, demand and exact the terms and conditions upon which such live stock shall be further moved to any other market for consumption, and that in the further movement thereof it will get one hundred per cent of such live stock so further moved for such further consumption to such other market, and that inasmuch as sixty per cent or more of the live stock which is sold at Louisville, Ky., is further moved for consumption to some other market, that it is, therefore, justified in taking the course condemned by the Court of Appeals in exacting delivery only at its live stock depot; and that any interference with its right to so control the movement of live stock from the city of Louisville is an interference with interstate commerce, and a requirement that it become a transfer company, and that in such requirement the courts of Kentucky take its property without due process of law.

This record discloses the fact that every railway company entering the city of Louisville, Kentucky, including the plaintiff in error, permits and makes delivery of its cars, when in car load lots, to any and all carriers for delivery within the switching limits of the city of Louisville as the terminal point of such shipment, save and

except as to the plaintiff in error where such delivery is to be made to the defendant in error.

We are told, however, that if the shipment originated in another State, and although it may have reached the point of its ultimate destination, that the State of ultimate destination can not make any regulation concerning the place, manner, or time of delivery without thereby burdening or thereby regulating interstate commerce. This contention and theory makes substance of a shadow and sacrifices right to theory and form.

All of the proof in this case shows that when the cars of plaintiff in error, loaded with live stock, are delivered to the Southern Railway Company for delivery to the defendant in error, that they are not detained in making such delivery for a time in excess of two hours, and the president of the plaintiff in error, in his testimony, admits that such detention is not unreasonable, and the per diem rules aforesaid allow a much greater time.

This question was fully considered by the Court of Appeals of Kentucky, and in answer to the contentions made by the plaintiff in error that court said:

> "Appellant is only required to switch its cars onto other tracks and to allow its cars to be thus used in the switching. The performance of such duties may, as held by the numerous authorities cited in the opinion, be required as incidental to the operation of the railroad. If a railroad company can be required, as a part of its service due the public, to transport the cars of another company over its lines, it may also be required to switch its own cars upon

the track of another and connecting road for the purposes of delivery. * * *

"No doctrine is better settled than that a railroad company takes its charter, holds its property and franchises and operates its road subject to the conditions and limitations imposed by the State in its Constitution and general laws, and also subject to future constitutional provisions and future general legislation. As said by Mr. Justice Brown in Minn. & St. L. R'y Co. v. Minn. R. R. & Warehouse Co., 186 U. S. 261, 'It is impossible for the State to exercise this power of regulation without interfering to some extent with the power of the railroad company to contract with either its customers or connecting lines.'

"In Penn. R. R. Co. v. Miller, 132 U. S. 75, it was held that 'Neither the original charter of the railroad company, nor subsequent acts conferring additional privileges constituted such a contract between the State and the company as exempted the latter from the operation of the subsequently adopted Constitution of Pennsylvania; that a constitutional provision as applied to the company in respect to cases afterwards arising did not impair the obligation of any contract between it and the State; and that the company took its charter subject to the general law of the State and to such changes as might be made in such general law, and subject to future constitutional provisions and future general legislation, since there was no prior contract with it exempting it from such enactment.' Lou. Water Co. v. Clark, 143 U. S. 1; L. & N. R. R. Co. v. Ky., 161 U. S. 677.

"We are unable to find any merit in the 6th and 7th contentions of appellant, that to require of it performance of switching would put it to increased cost and necessitate its parting with the possession and control of its cars into the possession of another and rival company, and thereby deprive it of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States. These contentions we have already in effect answered. Neither in principle nor in fact will the switching and delivery of cars demanded

of appellant deprive it of its property. The duties to be performed are incidental to the transportation of freight in bulk in the business of railroads, and requires only a necessary and not unreasonable temporary use of appellant's cars by the Southern Railway in unloading stock at appellee's stock yards after its transportation over appellant's road has been completed.

"That such switching is not an unreasonable or an unusual use of the cars of one company by another is made plain by the agreement appearing in the record, whereby the railroads of the country, including appellant, have agreed upon a uniform charge for rental of their cars when used by other roads. It is not perceived that appellant can consistently demand to be relieved of the performance of switching duties required by the provisions of the State Constitution, in view of its having already agreed to perform these duties, and of its willingness to yet perform them, for all other railroads that do not require live stock to be switched to appellee's yards.

"In the case of L. & N. R. R. Co. v. Commonwealth of Kentucky, 183 U. S. 513, we find the following pertinent statement of the law as to the property rights of a railroad company in its relations to the State: 'It is said that while it is true that railroad companies receive their rights to exist and to maintain their roads from the State, yet their ownership of such roads is property, and as such is protected from arbitrary interference by the State. But though it be conceded that ownership in a railroad is property, it is property of a kind that is subject to the regulations prescribed by the State.'

"Appellant's cars, like its roadbed and track, are property held for public purposes. Private property may be taken for the construction of the railroad on the ground that it is taken for public purposes, and when the railroad is constructed, it holds its property for public purposes. It must serve the public, and can not complain that its cars are used, even by another railroad company, if it is done in the usual course of the railroad business and for the benefit of a consignor or consignee entitled to the transportation or de-

livery of freight in bulk and contained in such cars. If this is in a sense the taking of its property for private purposes, appellant must, as a common carrier, submit to it, for it is only a temporary and necessary use of its property. Appellant can not suffer loss by such use of its cars. If it delivers its cars to the Southern Railway to be taken to appellee's stock yards for the loading or unloading of stock, that company has no right to detain them longer than a reasonable time for that purpose and must return them.

"Appellant may charge a reasonable amount for the use of its cars, and if they are not returned, or if detained an unreasonable time, it may sue the delinquent road for damages, or apply to a court of equity for a mandatory injunction to compel the return of the cars. Indeed, it can suffer no loss which the law may not remedy.

"By the regulation between railroads, cars are interchanged from one road to another at a fixed charge. In brief, appellant's contention comes in substance to this: That it has a right to discriminate and not allow all roads for all purposes to use its cars. This is the very evil that the constitutional provision in question was intended to prevent." (Rec. pp. 485, 486 and 487.)

The relative rights, in the performance of the duties of all persons, within the jurisdiction of a State belong primarily to such State, under its reserved power to provide for the safety of all persons or property within its limits; and that even if the subject of such regulations be one that may be taken under the exclusive control of Congress, and be reached by national legislation, any action taken by the State upon that subject that does no directly interfere with rights secured by the Constitution of the United States, or by some valid Act of Congress, must be respected until Congress intervenes. See

M. K. & T. R'y v. Hughes, 169 U. S. 613, and
Penn. R. R. Co. v. Hughes, 191 U. S. 489.

It is conceded that where live stock is shipped from another State through the State of Kentucky and to a point in still another State, that in its transportation through Kentucky that the State of Kentucky could not seize such commerce or interfere in its movement, but it is earnestly contended and confidently submitted that where the point of destination of articles of commerce (live stock), originating in any State, is destined for the city of Louisville as a terminal point, that after it reaches said city or terminal point it is within the power of the State of Kentucky to provide and prescribe the terms and conditions and the method by which it shall be delivered, and that such requirement is not an interference with commerce itself, but with the instruments or means used in making delivery thereof accordingly as may be and is within the power of each State to provide for such delivery.

The case of Houston & Texas Central R. R. Co. v. Mayes, 201 U. S. 321, involved the construction of a Texas statute much more drastic in its provisions than the provisions of Sections 213 and 214 of the Constitution of Kentucky. In that case the statute was addressed to railroad companies engaged in interstate commerce, and required that such railroad companies, upon notice should furnish, in accordance with the said notice, the number of cars required for interstate shipment. The

only excuse for not furnishing the cars was from strikes or other public calamities. It was held that the statute was too drastic in not allowing for unforeseen rush of travel, scarcity of cars, and other causes beyond the control of railway companies. It should be borne in mind, however, that this decision was by a bare majority of this court, and concluded with this sentence at page 331:

> "*Although it may be admitted that the statute is not far from the line of proper police regulation.*" (Our italics.)

In the course of the opinion of this court in that case by Mr. Justice Brown, it is further said at page 328:

> "That notwithstanding the exclusive nature of this power (referring to that of Congress over interstate commerce) the States may, in the exercise of their police power, make reasonable rules with regard to the methods of carrying on interstate business; the precautions that shall be used to avoid danger, the facilities for the comfort of passengers, and the safety of freight carried, and, to a certain extent, the stations at which stoppages shall be made, is settled by repeated decisions of this court."

And further at page 328:

> "The validity of local laws designed to protect passengers or employes, or persons crossing the railroad tracks, as well as other regulations intended for the public good, are generally recognized."

In the case of Pennsylvania R. R. Co. v. Hughes, 191 U. S. 490, this court, through Mr. Justice Day (quoting from the case of Chicago, Milwaukee, etc., R'y Co. v. Solan, 169 U. S. 137 and 138), said:

"A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable, according to the law of the State, for acts of non-feasance or of misfeasance committed within its limits. If he fails to deliver goods to the proper consignee at the right time and place, or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, the right of action for the consequent damage is given by the local law. It is equally within the power of the State to prescribe the safeguards and precautions foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, the State has the power to redress and to punish. The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits."

This record, as has already been stated, shows that by voluntary agreement the plaintiff in error undertook to serve the public by interchange of cars with the Southern Railway Company and all other railways parties to the per diem rules for switching and delivery purposes at a terminal point. This contract between the two railroads is certainly in no respect *ultra vires*. This contract, and the universal custom shown to exist for such interchange, when merely for switching and delivery purposes, is in

direct furtherance of public purposes of their incorporation, and having held themselves out to the general public as ready and willing to render the services, they assumed all the duties which the law imposes in view of the nature of the business and the customs incident to it.

It is horn-book law that a carrier can not renounce as against some disfavored industry the public duty which it assumed when it engaged in the kind of transportation business which it offers to conduct. Being a common carrier for all, the highest court in Kentucky has said that its Constitution requires that plaintiff in error must switch all cars tendered for that purpose, including those intended for the plant of defendant in error.

The facts in the case of Chicago, M. & St. P. R'y Co. v. Becker (C. C.), 32 Fed. Rep. 849, are in many essential respects analogous to those under consideration. In that case the court, at page 854, said:

> "The case presented is this: In order to afford facilities to shippers, the complainant has constructed short lines of road, or side tracks or switches, so called, from its yard or depot or main lines, running over and across the streets and highways to the various mills and manufacturing establishments in the city of Minneapolis; and its switches are so built as to enable it to take cars from the shippers at the mills, and deliver them to other lines of railway, or deliver cars to consignees received by it from other roads. When this service is performed, and the cars are to be transported from the city of Minneapolis over other roads, and when cars coming into that city over other roads are taken by the complainant over its own switches, and delivered to other roads or to consignees, a charge of $1.50 per car is

exacted for this switching service rendered, which is claimed to be reasonable and just; but if the cars are to be transported over its own line to the point of destination, or come into the city over complainant's main road, the service is free, and this separate and distinct charge, when made, is only for this local switching. This charge is not a part of the through rate fixed and determined beforehand, and has no reference to interstate shipment. The transportation of cars over the switches from the warehouses or mills to the depot, or from the depot to these mills, can be regulated in many respects by the commissioners, and the rate for performing the service fixed by virtue of the police power of the State, in the same manner as the carriage by dray per load or distance is established for the public good. And I see no difference in the principle to be applied in such cases, although, incidentally, they may be connected with interstate commerce. The service is local, and there is nothing upon the face of the order of the commissioners indicating that it is intended to regulate interstate commerce. Even if it is conceded that this carrying of freight over the switches is an act of interstate commerce, it does not necessarily follow that the order of the commission affecting this traffic is in violation of the Constitution of the United States. It is not every act that affects such commerce that amounts to a regulation of it; and this order fixing the price per car for service rendered, and to which the order applies, is not related to the contract for carrying the freight outside the limits of the State of Minnesota, and is not a part of it."

The case of State of Iowa v. Chicago, M. & St. P. R'y Co., 33 Fed. Rep. 391 to 395, is very much in point, and is like the Becker case in that it is purely a switching case.

The services required of plaintiff in error under the judgment in question are purely local. They have no relation to the contract of carriage by virtue of which

the freight was brought to the break-up yards of plaintiff in error within the limits of the terminal city (Louisville, Ky.).

The charge made by the Southern Railway Company for hauling with switch engines live stock in and out of the yards of the defendant in error is a terminal charge, and in no manner reduces the full freight to plaintiff in error.

We wish, however, in concluding this subject, to call especial attention to the facts disclosed in the record and adduced by the deposition of the president of the plaintiff in error. (See Rec. pp. 306 to 338.) By reference thereto it will be seen that the terminal facilities of plaintiff in error, so much valued by it, and necessary to the performance of the duties demanded by the decree now under review, were acquired under a grant given to the Louisville Railway Transfer Company by charter approved March 10, 1872. (See Appendix, Part III.) By reference to that charter, and particularly to Sec. 5 thereof, it will be seen that precisely the duties now demanded were required of said company and its obligations assumed by plaintiff in error, and at precisely the charges now made by the plaintiff in error for the performance of such services.

It will be further made to appear from the deposition of Mr. M. H. Smith, president of the plaintiff in error, that the said Louisville Railway Transfer Company was constructed with certain rights and privileges granted by

the city of Louisville under a contract of June 3, 1870, which required of the company operating said tracks, used in performing the switching services demanded by the decree herein, the performance of precisely the same duties and for the same charges as are made by plaintiff in error. (See Rec. pp. 377 to 383, and Rec. pp. 374 to 376.)

At the conclusion of the deposition of said witness an effort was made to show that while the said charter and contract referred to so provided for switching services or the operation of said tracks, that such had not been the practice of the plaintiff in error since it acquired said facilities. But certainly a duty imposed by law can not be lost to the public by non-user.

Constitutional Conventions of the different States and the legislators thereof have their own economic theories, their own views of justice and public policy; and their views, when embodied in a written law, must prevail. Whenever the legislative power to change any of these rules of the common law has been drawn in question in this court it has been sustained.

That the States may by their laws fix the relative rights, duties, obligations, and liabilities of all persons or corporations within their territorial jurisdiction, and thus control in that respect those who are engaged in interstate and foreign commerce; that such laws do not proceed from any power to regulate such commerce, though incidentally and indirectly they do regulate it,

but are to be referred to their general power over persons and things within their territories, seems to be well settled. See

Sherlock v. Alling, 92 U. S. 99.
Nashville, C. & St. L. R. R. Co. v. Alabama, 128 U. S. 96.
Hennington v. Georgia, 163 U. S. 299.
N. Y., N. H. & H. R. Co. v. N. Y., 165 U. S. 628.
Chicago, M. & St. P. R. Co. v. Solan, 169 U. S. 133.
Penn. R. Co. v. Hughes, 193 U. S. 477.

We earnestly insist, therefore, that the judgment in question is not only conformable to the provisions of the Constitution of Kentucky, but is in accord with the charter duties and contract obligations of the original constructor of the said tracks and of the plaintiff in error by assumption thereof upon acquisition of said charter and contract obligations, and that same is clearly subject to State control.

II.

THE POLICE POWER OF THE STATE CAN NOT BE BARGAINED AWAY OR CONTRACTED AGAINST AND WHEN, WITHIN SUCH POWER, A DUTY OF A COMMON CARRIER IS REQUIRED BY CONSTITUTIONAL OR STATUTORY PROVISION THE QUESTION OF INCONVENIENCE OR EXPENSE IS IMMATERIAL.

Nearly all of the testimony in behalf of plaintiff in error was taken to show that the actual cost of switching from Seventh and Magnolia streets in the city of Louisville to the Bourbon Stock Yards, the live stock depot of plaintiff in error in the city of Louisville, is $1.58 8/10 or more per car, where the switching rate or fee is only $1 per car.

The facts in this case, as disclosed from the testimony, and not to the slightest extent controverted, show that prior to the construction of defendant in error's yards the switching charge of plaintiff in error to all connecting carriers at their various points of physical connection with the plaintiff in error from such point to the Bourbon Stock Yards was $3 per car, and that afterwards said switching charge was reduced to $2 per car, and still after the opening of the yards of defendant in error said switching charge to other connecting carriers with plaintiff in error from such point of con-

nection to the Bourbon Stock Yards was reduced to $1 per car. It is a further conceded fact that the switching charges of plaintiff in error have at all times been voluntarily fixed by it. This case does not seek to either fix or regulate plaintiff in error's switching charges.

Every railroad company entering the city of Louisville, or any city, has what is commonly known as break-up yards. These yards are at a terminal point where the road engine bringing in a train consisting of many cars of different classes of freight is stopped, the road engine detached and the train broken up with the use of switch engines, and the cars by such switch engines are carried to the particular enterprise or industry within the switching limits of such terminal point.

The break-up yards of plaintiff in error in Louisville are at South Louisville, and about one and a half miles from Seventh and Magnolia streets, which is the principal interchange point and point of physical connection between the tracks of plaintiff in error and the Southern Railway Company, at which point large numbers of cars of every class of freight are daily interchanged by the two railroad systems either for further transportation by the one or the other, or for delivery by the one or the other to the various industries on the terminals of the one or the other.

This case is based upon and must stand or fall by the proper interpretation to be given to Sections 213 and 214 of the Constitution of Kentucky, copied *supra*. It was

held by the chancellor and by the Court of Appeals of Kentucky that Section 213 of the Constitution was a plain, mandatory switching regulation imposed upon all common carriers by the State, and that, inasmuch as plaintiff in error voluntarily fixed the price or charge for such service rendered by it, it could not reasonably complain that it was not remunerative.

The pivotal question, therefore, presented is, what was the intent and purpose of the Constitution, and particularly Section 213? The Debates of the Constitutional Convention of Kentucky (Vol. 4, pp. 5118 to 5162) will throw much light upon this question. It is shown from the said debates that the act and conduct of the plaintiff in error complained of herein brought into being the said sections of the said Constitution. It appears from the said debates that some years ago, before the adoption of the Constitution, there was established in the western portion of the city of Louisville a stock yards plant known as the Kentucky & Indiana Stock Yards Company, which was located on the Kentucky & Indiana Bridge Company's tracks, and that the plaintiff in error refused to receive, bill, transport, transfer, or deliver any live stock destined to said K. & I. Stock Yards, and that the said section of the Constitution was specifically designed to deny the right of a common carrier to so discriminate against a stock yards company in favor of some other company, as has been the course of conduct on the part of the plaintiff in error in its discriminations against the defendant in error.

In other words, the history of the injustice to the K. & I. Stock Yards Company that brought into being Section 213 of the present Constitution is repeated in the conduct of plaintiff in error toward defendant in error herein.

It will be urged at great length, and with skill and ability, that the opinion of this court in the case of defendant in error vs. plaintiff in error, reported in 192 U. S., page 568, is conclusive of the right of plaintiff in error herein to refuse to obey mandatory provisions of said Section 213 of the Constitution. It will be claimed that this is conclusive, not in the sense that it is *res adjudicata*, but that it is an adjudication directly in point. This claim was made before the chancellor (see Rec. pp. 188 and 189), and in the Court of Appeals of Kentucky. That court, in answer to said contention, said:

> "It is, however, earnestly argued by counsel for appellant that the case of Central Stock Yards Co. v. L. & N. R. R. Co., *supra*, is an adjudication directly in point, but this claim does not appear to be conclusive, as the following excerpts from the opinion of the Supreme Court in that case will show:
>
> " 'We also lay on one side the question whether the section of the Constitution of Kentucky is or is not invalid, as an attempt to regulate commerce among the States. For we are of opinion that the defendant's conduct is not within the prohibition or requirement of either act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed. * * * We have discussed the case as if the two stock yards were side by side. They were not, but they were both points of delivery

for cattle, having Louisville for their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which a carriage to another station in the same city by another road fairly might be regarded as a *bona fide* further transportation over a connecting road, and within the requirements of the Kentucky Constitution. However, that may be, we are of opinion that the court below was entirely right, so far as it appears, in treating this as an ordinary case, of stations at substantially the same point of delivery, and therefore, as one to be dealt with as if they were side by side.' It is patent the Supreme Court expressly declined to apply either the Constitution of Kentucky, or the Interstate Commerce Act, to the case before it, and in so holding incidentally declared the defendant's conduct was not within the prohibition or requirements of either the State constitution or the act of Congress, though admitting in a subsequent paragraph of the opinion that a case might arise in which carriage to another station in the same city by another road, might be regarded as a *bona fide* further transportation over a connecting road, and within the requirements of the Kentucky Constitution.

"We do not think the opinion, *supra*, is to be understood as limiting the duty of a common carrier, under section 213, to that of only receiving cars of other roads coming to such common carrier, for the court did not construe or apply the section and we will not presume that it intended an interpretation not justified by the language of the section. The wording of the section with respect to all common carriers is that they 'shall so receive, deliver, transfer and transport all freight as above set forth from and to any point where there is physical connection with the tracks of said companies.' Nor do we think the language, 'shall receive, transfer, deliver and switch, empty or loaded cars,' appearing in this section means that common carriers shall be required to transfer and deliver to other carriers only such cars as it may receive of such other carriers. Such a narrow construction would allow each railroad company

to say that it would not part with its own cars; consequently, there would be no cars to receive.

"The cases of Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., 67 Fed. Rep. 36, and Covington Stock Yards Co. v. Keith, 139 U. S. 128, relied on in this connection by appellant's counsel, throw little light upon the question here involved. The first was, as stated in the opinion, an action * * * 'To compel it (the L. & N. R. R. Co.) to build a spur track connecting with complainant's yards,' consequently it presents no question involved in the case at bar.

"The other only holds that a carrier having established its own stock yards, can not be required under the common law to furnish another for loading or unloading stock at any other point in the city.

"In point of fact, it differs from the case at bar in this; Keith was the proprietor of stock yards in the city of Covington, provided with all the necessary means of receiving, feeding, and caring for such stock as he purchased, or as might be consigned to him by others for sale.' His business, therefore, was that of 'buying and selling on commission, as well as on his own account, live stock, brought to and shipped from Covington over the Kentucky Central Railroad.' He was maintaining his own private stock yards for his own use. Whereas, in the case at bar, appellee maintains public yards; its position with reference to its patrons and the public being that of a public warehouseman, ready to serve all alike, and care for all the stock that may come. Appellee does not buy and sell stock, but only yards and cares for it. Appellant may, under ordinary circumstances, have the right to compel a private individual to accept a delivery of live stock at its own yards, but we do not think it has the right to enter into a preferential contract with one public stock yards, which obligates it to make such stock yards a monopoly, and by that means destroy or cripple another public stock yards equally well equipped for handling and caring for live stock, and having an equal right to require the delivery of live stock by appellant to it.

"It is also contended for appellant that this court, in L. & N. R. R. Co. v. Com., 108 Ky. 628, construed the constitutional provision involved in this case as in harmony with Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., and Covington Stock Yards Co. v. Keith, *supra*. We think counsel err in this conclusion, for in L. & N. R. R. Co. v. Com., the controversy as to rate discrimination, which necessitated a construction of section 215 of the Constitution, in connection with section 214, and others of the same instrument, the former being the section under which the railroad company was indicted. The point decided in that case was that the rigid inhibition as to preferential exclusive contracts contained in section 214, was modified by the qualifying phrase 'upon the same conditions' found in section 215. No such question is here involved.

"We think the further contention of appellant that the Bourbon Stock Yards and those of appellee should be treated as if they were side by side untenable, because as a matter of fact, they are not side by side. The proof shows by actual measurement that the distance from the Bourbon Stock Yards to that of appellee by the route over which live stock must pass is about eight miles, or to be more specific, the distance from appellee's yards to 7th and Magnolia streets is two and one-tenth miles; from the latter point to South Louisville is one and 71 one-hundredths miles; from South Louisville to the switch at East Louisville, from which point stock is carried to the Bourbon Stock Yards, is three and 94 one-hundredths miles, and from the switch at East Louisville to the railroad pens of the Bourbon Stock Yards the distance is from 800 to 900 feet. The addition of these distances will make the full distance between the two stock yards about eight miles. We think, therefore, that it would not do violence to the rights of the parties litigant to assume that these yards are not side by side, and should not, in our opinion, be so regarded. Moreover, it would not seem unreasonable to say that the moving of freight within the territory of a populous city like Louisville, proximately, if not actually, a distance of eight miles, is

further transportation, even in the meaning of the statement quoted above from the opinion of the Supreme Court in Central Stock Yards Co. v. L. & N. R. R. Co. *supra*. At any rate, it should be so regarded, unless we are to conclude that further transportation can only mean transportation to another city, or some point of delivery other than that to which the freight is consigned, which we are not prepared to concede.

"In our opinion, not only had the Constitutional Convention the power to impose regulations upon all railroads within the State, requiring interchange of cars and switching at points of physical connection, in receiving and delivering freight, and the use of their terminals for such service, as manifestly contemplated by section 213, but under the general police power of the State, performance of such duties may be compelled by legislative enactment alone.

"This doctrine is recognized in L. & N. R. R. Co. v. Pittsburgh & Kanawha Coal Co., 111 Ky. 960, wherein it is said: 'As incidental to the operation of a railroad it has the power to interchange cars with a connecting carrier, and such is the ordinary and usual way of doing business between common carriers, and the overwhelming weight of authority is the effect that common carriers may, by constitutional requirement, or legislative enactment, be compelled to interchange cars the one with the other for delivery on the line of the one or the other to the named consignee.'

"In L. & N. R. R. Co. v. Williams, 95 Ky. 199, it was held that although section 213 of the Constitution required railroad companies to receive for transportation cars belonging to other companies, still, if such cars are so constructed as to render it unsafe to handle them in the ordinary mode, it is the duty of the company to refuse to receive them. Conversely expressed, the necessary meaning of the above judicial conclusion is that if a car offered to the connecting carrier is not unsafe, the latter is, by the provisions of the section, *supra*, compelled to receive it.

"In Burlington C. R. & N. R. R. Co. v. Dey, 82 Iowa, 336 (12 L. R. A. 436), the Supreme Court of

that State, in upholding the constitutionality of a statute containing provisions similar to those of section 213, Kentucky Constitution, said: 'The fact that the transfer of cars of one company to another for the transportation of property over more than one railroad without breaking bulk, has been practiced so long as to be recognized as of the usual course of business, of which we will take judicial notice, (Peoria & P. N. R'y Co. v. Chicago, R. I. & P. R. Co., 109 Ill. 139), is a complete answer to the complaints made in the objection under consideration. Surely a course of business so long pursued and so extensively prevailing and demanded by the commerce of the country can not, when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional.

"The railroad company as a common carrier is required to receive and transport freight offered it for transportation. The reasons upon which this rule is founded impose upon it the obligation to have cars of other companies brought to it for transportation over its own road. As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing the duty thus imposed can not be regarded as interfering with the constitutional guaranties for the protection of the rights and property of such companies.

"Railroad corporations are quasi public corporations, dedicated to public use. In accepting their charters they necessarily accept them with all the duties and liabilities imposed upon them by law. Thus a quasi public trust is created, which clothes the public with an interest in the use of railroads, which can be controlled by the public to the extent of the interest conferred therein.'

"In Jacobson v. Wisconsin, Minn. & P. R. R. Co., 71 Minn. 532 (40 L. R. A. 392), the Supreme Court of Minnesota, having under consideration a statute substantially like section 213 of our Constitution, said of its constitutionality: 'We are clearly of the opinion that the Legislature has the power to compel a common carrier to do business in the ordinary and

usual way, and, therefore, may compel such interchange of cars as incidental to the business for which the company was chartered.'

"In Michigan C. R. R. Co. v. Smithson, 45 Mich. 221, Judge Cooley said of a like statute: 'The necessities of commerce require this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish could hardly fail to be speedy and effectual.' In McCoy v. C. I. St. L. & C. R. R. Co., 13 Fed. Rep. 3, we find this statement of the same doctrine: 'A railroad company can not bind itself to deliver to a particular stock yard all live stock coming over its line to a certain point, but it is bound to transport over its road and deliver at such points reached by its tracks or connections all live stock consigned, or which the shipper desires to consign to them, upon the same terms, and in the same manner, as, under like conditions, it transports and delivers to their competitors; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yards discriminated against.'

"In Coe v. L. & N. R. R. Co., 3 Fed. Rep. 778, it is said: 'The facts suggest the very important inquiry, how far railroads called into being to subserve the public, can be lawfully manipulated by those who control them, to advance incidentally their own private interests, or depress the business of particular individuals or localities for the benefit of other persons or communities. As common carriers they are by law bound to receive, transport and deliver freight offered for that purpose in accordance with the usual course of business. The delivery when practicable must be to the consignee.'

"In Peoria & P. U. R. R. Co. v. C. R. J. & P. R. Co., 109 Ill. 135, the doctrine is also recognized in the following words of approval:

" 'It is a matter of so much public concern that judicial notice may be taken of the fact, that cars belonging to different companies are interchangeably used on all the railroads in the United States, and that no company could do any considerable freight-

ing business that did not conform to this general usage. Without such usage, it would be difficult, if indeed, it would be impossible, to transact the commercial business of the country.'

"An examination of the following additional authorities will show that they are in accord with those from which we have so liberally quoted: Interstate Stock Yards Co. v. R. R. Cos., 99 Fed. Rep. 472; L. & E. & St. L. Consol. R'y Co. v. Wilson, 18 L. R. A. 105; R. R. Co. v. Goodridge, 149 U. S. 680; Inman v. St. L. S. W. R'y Co., 37 S. W. 37; B. C. & N. R. R. Co. v. Dey, 82 Iowa, 443; Atchison, T. & S. F. R. R. Co. v. Denver & N. O. R. Co., 110 U. S. 667; State v. Wabash St. L. & P. R. R. Co., 83 Mo. 144.

"In view of the foregoing authorities, we think it free from doubt that a common carrier may be required to make transfer of freight to the connecting carrier without breaking bulk, and that such is the customary way of transferring live stock from the initial carrier to the connecting carrier, is abundantly shown by the evidence appearing in the record.

"This custom among common carriers is not only reasonable, and, as applied to the transportation of live stock, manifestly humane, but it is indispensably necessary to the demands of commerce.

"Live stock, and what is called perishable freight, damage quickly from travel, rehandling and delay, and this well known fact gave birth, doubtless, to the custom of transferring such freight by interchange of cars where it is transported over more than one road, delivery being made by the first carrier at the end of its line to the connecting carrier. But, leaving out of view any question of appellant's duty under the common law, we have certain plain, unambiguous provisions of the State Constitution, requiring of it the delivery, through another carrier at Louisville, with whose road it has physical connection, live stock consigned to appellee, and if it be conceded that the Constitution is indefinite or even silent as to the precise manner in which such delivery shall be made, we find that as a matter of custom the usual and proper way to make such delivery is by the inter-

change of cars, and that this custom is observed by appellant with respect to other railroads, except in the matter of delivering through the Southern R'y to appellee, live stock consigned to it over appellant's lines of road. In other words, where live stock is consigned to appellee over appellant's road, it arbitrarily refuses to deliver it, except at the Bourbon Stock Yards, where it is unloaded from the cars, and to be taken from that point to appellee's yards, it must be reloaded on the cars and carried a distance of about eight miles, or driven on foot through the streets of Louisville, a distance of four miles; either reloading, or driving them through the city, would cause injury to the stock by shrinkage and consequent loss to the shipper. This, it seems to us, is a wrong, both to appellee and its patrons, and if persisted in by appellant would destroy appellee's business.

"The duty imposed by the provisions of the Constitution upon appellant to make delivery of live stock as demanded by appellee, is not, in our opinion, affected by the fact that its performance will involve on appellant's part, or that of the connecting carrier, what are technically known as switching movements, for as said in Missouri Pacific R'y Co. v. Wichita Wholesale Grocery Company, 40 Pacific, 899, 'The distance over which freight is hauled, whether in car loads or less quantities, whether in its own cars or that belonging to connecting carriers, can make no difference with the capacity in which the company acts. A railroad transporting a passenger or car load of freight one mile, using a switch engine for motive power, is just as much a common carrier as if the distance were a thousand miles by regular freight or passenger train.' Manifestly it is the duty of appellant, as a common carrier, to accept and carry all freight tendered it, and make delivery thereof to the consignee, if the point of destination is on its lines, but if destined to a point not on its lines, it must nevertheless accept and carry such freight to the end of its lines and there deliver it to the connecting carrier with the instructions of the shipper.

"In Elliott on Railroads the common law duty of a common carrier is thus stated: 'As a general rule no carrier is bound by law to accept and carry goods beyond the terminus of its own line. In the absence of any agreement, either express or clearly implied, for transportation beyond its own line, the common law duty of an independent carrier is performed by safely transporting the goods over its own line and delivering them to the consignee or connecting carrier, as the case may be. In such a case the goods are to be delivered by the initial carrier to the connecting carrier for further transportation; the former is considered as a forwarding agent rather than a carrier, as to such further transportation, and is not liable for the default of subsequent carriers. Its whole duty is not always performed, however, by merely tendering the goods to the connecting carrier. If the latter refuses to receive them, it is generally the duty of the initial carrier to notify the consignor or the consignee without unreasonable delay, and to store or otherwise take care of the goods for a reasonable time while awaiting instructions. * * * So, where instructions are to be given to it with the goods to be transmitted to succeeding carriers, it is the duty of such initial carrier to duly transmit them to the connecting carrier.' Elliott on Railroads, Vol. 4, Sec. 1432.

"'It is in general the duty of the initial carrier to obey the instructions of the shipper as to the route, mode of carriage and the like, and it should also transmit the instructions of the shipper to the connecting carrier.' Elliott on Railroads, Vol. 4, Sec. 1440; P. R. R. Co. v. Jones, 155 U. S. 333; Daner v. N. Y., etc., R. R. Co., 50 Howard, 428; Little Miami R. R. Co. v. Washburn, 22 Ohio, 330; Parker v. C. S. B. Q. R. R. Co., etc., 56 Conn. 137; Bosworth v. Chicago R'y Co., 37 Fed. Rep. 72; R. R. Co. v. Mfg. Co., 16 Wallace, 318; Vincent v. C. & A. R. R. Co., 49 Ill. 41; Coe v. L. & N. R. R. Co., 3 Fed. Rep. 778; In Re Patterson, Fed. Rep. 3, 89; North v. Transportation Co., 146 Mass. 315; M. S. & I. R. R. Co. v. Day, 20 Ill. 375; Beers v. Wabash, St. L. & P. R. R. Co., 34 Fed. Rep. 244; L. & N. R. R. Co. v. Odell, 33 S. W. 611; McCoy v. C. & I. St. L. & C., 13 Fed. Rep. 3.

"The right of the shipper to have his goods delivered to a connecting line is involved in the right to consign them as he chooses, and while he can not require the initial carrier, at common law, to assume any obligation beyond its own lines he can compel it to carry to the end of his line and deliver, according to the usual course. And we also think that a common carrier is as much bound to carry for another common carrier as it is to carry for other persons. Seasongood, etc., Co. v. Ohio & Tenn. River Transportation Co., 21 Ky. L. R. 1144."

In brief, the question is, shall a common carrier, acquiring its existence and powers from the State, be required to obey the Constitution of the State? In none of the cases relied upon by plaintiff in error was this question for decision. All of those cases were tried under the common law as applicable to carriers. It must be admitted that the State has the power to compel its railroad corporations to exchange freight with each other. It can even require the carrier to deliver live stock at every stock yard on its line, but it has not done so. If the State may go so far as to alter, amend, and even repeal the charter of a railroad company, it certainly has the power of imposing a mere regulation as to the forwarding of freight, or require a certain character of delivery at a terminal point. And the State of Kentucky, having in its Constitution expressly required the plaintiff in error to receive and exchange cars from and with other roads at a terminal point, and for delivery purposes, it is perfectly plain that the "stock yard" cases relied upon and decided upon common law principles, are

not at all applicable to this case. That is not a "stock yard" case under the common law, but a "switching" case under the Constitution.

Can there be any question of the power of a State to impose switching regulations upon all common carriers within said State? We do not think any one would say that it is not within the police powers of the State, and that it was not in the province of the Constitutional Convention to exact the performance of switching duties and the use of the terminals of a common carrier for such service, and we do not see any escape from the conclusion that Section 213 was intended to impose the duties upon common carriers as required by the decree complained of, and that said section of the Constitution can have no other meaning than such as has been given it by the courts of Kentucky.

We invite the court's especial attention to the depositions of the high officials of railway companies, found in the transcript of the evidence, namely, those of S. A. Stalcup, Edwin Fitzgerald, B. S. Josselyn, T. C. Powell, Thomas Welsh, A. Philbrick, and H. B. Spencer (see Transcript of Evidence, pages 245 to 294). When the testimony of these witnesses is examined it will be conclusively shown that, for delivery purposes at the point of destination of live stock and within the switching limits of such terminal point of connection, the universal custom of railroads is not to require the same to be transferred from one car to another where the use of the car is only for a short period of time in making delivery.

The testimony of the operating employes of the Southern Railway Company shows that from Seventh and Magnolia streets to the Central Stock Yards Company deliveries are made and the empty cars returned inside of two hours, and the president of the plaintiff in error, in his testimony, says that such a delay is not unreasonable.

We are told, however, that the yards of the Bourbon Stock Yards Company and those of defendant in error, should be treated as if they "were side by side." Unfortunately the case in this court, between the parties hereto, was largely determined upon the pleadings. Whereas, in this case, as shown from the transcript of evidence, the case was fully developed by the examination and cross-examination of a large number of witnesses, and, taking the measurements of the distance from the plant of defendant in error to that of the Bourbon Stock Yards, we find that by the route over which live stock must pass, the distance is about 8 miles. (See deposition of plaintiff in error's witness, C. O. Bradford, questions and answers Nos. 12, 13 and 14, pages 338 and 339 of Transcript of Evidence.) From said witness' testimony it will be seen that the distance from the Central Yards to Seventh and Magnolia is 2.10 miles; that the distance from Seventh and Magnolia to South Louisville is 1.71 miles; that the distance from South Louisville to the switch at East Louisville, from which point stock is carried to the Bourbon Yards, is 3.94 miles; and that

from the switch at East Louisville to the unloading pens of the Bourbon Yards is a distance of between 800 and 900 feet, which makes the aggregate distance about 8 miles, and, notwithstanding this fact, it will be earnestly insisted that these two yards must be treated as being "side by side."

In the course of the opinion by this court it is said:

> "It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as *bona fide* further transportation over a connecting road, and within the requirements of the Kentucky Constitution."

If the movement of freight within the limits of a crowded city like Louisville a distance of about eight miles is not further transportation, then we can not conceive of a state of case wherein there would be further transportation, unless the court shall establish that further transportation must mean to some other city or delivery point than that to which the freight is consigned.

It seems to us that it was unquestionably the right of the State of Kentucky, in the exercise of its police power, through the provisions of its Constitution and statute, to make the reasonable regulations as therein provided with respect to common carriers, determining and fixing the place and manner and time of delivery at a point within the State of freight, even though the same should be moving in the channels of interstate commerce. And it likewise seems clear that the regulations provided by the

State of Kentucky, and the enforcement thereof, by the judgment under review, do not directly burden interstate commerce.

The enforcement of the laws of Kentucky, as contained within the judgment upon review, do not require of the plaintiff in error that it deliver its cars containing articles of commerce beyond its right of way, or to any private siding, but simply that when such commerce reaches its point of destination at Louisville, Ky., that it shall be delivered at the place, in the manner, and time as provided by the laws of Kentucky without affecting the rights of the plaintiff in error as a carrier.

It should be observed further that the plaintiff in error and the Southern Railway Company have agreed that at a terminal point, as at Louisville, Ky., each road shall interchange and transfer freight in car load lots for delivery purposes upon fixed and definite compensation to be paid for the cars while so used in making such delivery, and further that the plaintiff in error is obligated by the charter provisions of the Louisville Railway Transfer Company, the rights of which it acquired by purchase, and by the contract between the city of Louisville and the said plaintiff in error, that there should be done precisely what is required of it by the Constitution and laws of Kentucky, and we think it perfectly manifest, therefore, that the case of McNeill v. Southern Railway Company, 202 U. S. 445, is not applicable to the case at bar.

In the case of Atlantic Coast Line Railroad Company v. N. Car Corporation Commission, 206 U. S. pp. 1 to 27, it is clearly held: (1) That it is within the power of a State Railroad Commission (the creature of the State) to compel a railroad company to make reasonable connections with other roads so as to promote the convenience of the traveling public; and (2) That a State has power to compel a railroad company to perform a particular and specified duty necessary for the convenience of the public, even though it may entail some pecuniary loss.

We earnestly insist, therefore, that it was within the police power of the State of Kentucky to require of plaintiff in error, as a common carrier, and at a point of ultimate destination of commerce, that the same should be delivered accordingly, as was, and is directed, by the constitutional and statutory provisions of Kentucky as interpreted by the court of last resort of said State, and that the judgment upon review contains the true and correct meaning of the said sections of the Constitution and statutes of Kentucky, and that the construction placed thereon by the court of last resort of Kentucky is binding upon this court.

III.

SECTION FOUR OF THE CONTRACT OF PLAINTIFF IN ERROR WITH THE BOURBON STOCK YARDS TO DELIVER TO IT ALL LIVE STOCK BROUGHT OVER PLAINTIFF IN ERROR'S LINES TO THE CITY OF LOUISVILLE, KY., IS IN CONTRAVENTION OF THE LAWS OF KENTUCKY, AGAINST PUBLIC POLICY AND VOID, AND IN NO EVENT RELIEVES PLAINTIFF IN ERROR OF THE DUTY IMPOSED BY LAW TO RECEIVE, SWITCH, AND DELIVER SUCH STOCK, DESTINED TO THE CENTRAL STOCK YARDS, TO CONNECTING CARRIERS FOR DELIVERY AT SAID CENTRAL STOCK YARDS.

The plaintiff in error claims that it had many years ago established and furnished a sufficient live stock depot, known as the Bourbon Stock Yards, with sufficient facilities for handling, feeding, and caring for live stock coming to the city of Louisville, and that it is not required to furnish any further live stock depot in said city, nor is it required to have any live stock coming over its lines to Louisville as a market unloaded at any other depot than its own. Its principal defense in this action is the claim of the validity of this contract, and it says that it is not required to comply with the mandatory provisions of Section 213 of the Constitution commented upon hereinbefore, and that its said contract with the Bourbon

Stock Yards is violative of no constitutional provision of the State of Kentucky. The fourth clause of the contract of appellant with the Bourbon Stock Yards reads as follows:

> "4. First party agrees that it will not lease, rent or sell any of its ground, in the city of Louisville, for the establishment of a stock yards, or otherwise facilitate the establishment of a stock yard in the said city, and it will establish no other stock depot in the said city, and that it will deliver, and cause to be delivered, to the second party, so far as it legally may, all live stock shipped over the roads of the first party and consigned to the city of Louisville, and should any live stock be shipped to other person or persons in said city, the first party hereby makes and agrees to make the stock yards of the second party the stock depot of the first party for said city, and agrees to unload all live stock shipped to said city at the address of the second party, *but if the provisions of this section of this contract be abrogated or invalidated by judgment of any court, or by legislative requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions, and the second party shall, at its own cost and expense, defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom.*" (Our italics.) Rec. p. 66.

The defendant in error claims that this Bourbon contract is against public policy and absolutely void, being in contravention of Section 214 of our State Constitution, which reads as follows:

> "Sec. 214. EXCLUSIVE OR PREFERENTIAL CONTRACT FORBIDDEN.—No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association, or corporation, for

the receipt, transfer, delivery, transportation, handling, care, or custody of any freight, or for the conduct of any business as a common carrier."

We can not conceive of a contract being more violative of a State constitutional provision than this contract, and if the same is not violative of the plain provisions of Section 214 of the Constitution, then there could not be any contract of a common carrier within the prohibitory terms of the said section of the Constitution. When Section 214 was offered in the Constitutional Convention, the author of the said section said with respect thereto:

"This, gentlemen, meets the Bourbon Stock Yards case. It will break up that infamous contract, and say to the L. & N. that they must ship stock for anybody else just the same as for the Bourbon Stock Yard. If they haul it for the Bourbon Stock Yard at ten dollars a car, they must haul it for the Kentucky Stock Yard for ten dollars a car, and they must haul it for anybody else's stock yard at the same rates. Let me tell you what I saw in Louisville under the operation of this law. A gentleman had a lot of land alongside the Louisville & Nashville Railroad, just at the east end, a few feet beyond the Bourbon Stock Yard. Assuming that there was no reason why he should not run a stock yard, he built a stock yard at a cost of thousands of dollars, and then, when he applied to the L. & N. to put in the switches, they said, 'We will not carry any stock into your stock yard.' They said, 'We will not give you a switch.' That man was compelled to tear down his stock yard, and it stands to-day on the left; and as you go into Louisville you will see eight or ten little cottages built on the ruins of this stock yard, simply because the L. & N. directors were interested in the Bourbon Stock Yards in former years, had made an exclusive contract with the Louisville & Nashville Railroad, and would receive no freight from him. Now, I ask you, assembled here and representing the sover-

eignty of Kentucky, and justice between man and man, if any corporation, a being created by the State of Kentucky, clothed with the power of the State of Kentucky, should be permitted to inflict such infamous wrong upon the people of the State?" (See Debates, Vol. 4, pp. 5134 and 5135.)

This claim of plaintiff in error that it was required to furnish only one live stock depot in Louisville, Ky., and that having made the Bourbon Stock Yards its exclusive live stock depot it could not be required to make deliveries elsewhere, was fully presented to and considered by the Court of Appeals of Kentucky, and in answer thereto that court said:

"Appellant can not justify the acts complained of upon the ground that they were required by its contract with the Bourbon Stock Yards which would have been violated had it complied with appellee's demands as to the delivery of live stock to it. The contract in question was entered into by the parties prior to the assembling of the Constitutional Convention. * * *

"Three things are apparent from the language of this clause of the contract, viz.: That the parties at the time of its execution were themselves in doubt as to its validity; that appellant can sustain no loss, either by way of cost incurred in litigation arising from it, or in the matter of damages to be paid the Bourbon Stock Yards in the event the contract should be abrogated by the judgment of a court or by legislative requirement, and finally that the parties had in contemplation some early change in the laws of the State, organic or statutory, that might require the abrogation of this contract.

"That this is an exclusive and preferential contract, such as is expressly forbidden by Section 214 of the State Constitution, there can be no doubt, and likewise such as the courts everywhere have denounced as against public policy, because promotive

of monopoly and hurtful to the public, as well as the person or persons sustaining special injury therefrom.

"A similar contract was recently condemned by this court in the case of Bedford-Bowling Green Stone Co., etc., v. Oman, etc., 115 Ky. 369. One of the points of controversy was whether the Louisville & Nashville Railroad Company should be required to transport on its cars stone from appellee's quarry, which it had refused to do on the ground that by contract with the Bedford-Bowling Green Stone Co., a competitor of appellee's, and owner of a quarry, side by side with theirs, it had obligated itself to use the switch connecting both quarries with the main track, three miles distant, only for the transportation of stone from the Bedford-Bowling Green Stone Company's quarry, the latter company having purchased the switch with the quarry property from its grantor. In disposing of this connection of the railroad company the court, through Judge Barker, said:

" 'This contract and other evidence in the record bearing upon the question show that the Louisville & Nashville Railroad Company during the continuance of this last contract has the control and management of the railroad switch. It owns, controls and operates the engines and other rolling stock which pass over the line. It keeps the railroad in repair and owns all the material which goes into it. So far as this record shows it exercises the same control and dominion over this line that it does over any other part of its system, and we think by the terms of the contract in question the switch, during the continuance of the contract, at least, became a part of the general system of the Louisville & Nashville Railroad Company. This being so it can not lawfully refuse to receive and transport freight belonging to appellee to and from such reasonable points along the line at which they may lawfully ship or receive it. This was clearly settled by the opinion of this court in the case of the Louisville & Nashville Railroad Company v. Pittsburgh & Kanawha Coal Co., 111 Ky. 960, in which it is said: "Railroad Companies are quasi public corporations, created for the

purpose of exercising the functions and performing the duties of common carriers. These duties are defined by law, and in accepting their charters they necessarily take with them all the duties and liabilities annexed; and they are required to supply to the extent of their resources adequate facilities for the transportation of all business offered and to deal fairly and impartially with their patrons. (McCoy v. C. & I. St. L. C. R. R. Co., 13 Fed. Rep. 5; Munn v. Ill., 94 U. S. 136.) And they have no right to contract with a corporation or individual to give exclusive rights to transfer any commodity over any part of their line.'' * * *

"In L. & N. R. R. Co. v. Pittsburgh & K. Coal Co., 111 Ky. 960, quoted with approval by the opinion in the case, *supra*, another such preferential contract was condemned in the following language: 'In our opinion the contract with the Cannel Creek Coal Company giving them exclusive use of the switch, for coal purposes, was against public policy and absolutely void.' In other cases brought to this court, contracts of the character of that here assailed have been declared absolutely void. Comlth. v. L. & N. R. R. Co., 27 R. 497; Anderson v. Jett, 89 Ky. 375. And looking to the decisions of the courts of last resorts of other States with respect to such contracts, we find nearly all of them in harmony with our own, those here cited being strongly in point. Peoria & R. I. R. R. Co. v. C. V. M. Co., 68 Ill. 489; Munn v. Ill., 94 U. S. 126; McCoy v. R. R. Co., 13 Fed. Rep. 5; Inter Ocean Co. v. Associated Press, 184 Ill. 448; Chicago & N. W. R. Co. v. People, 56 Ill. 365; Sanford v. R. R. Co., 24 Pa. 382; State v. Hartford & N. H. R. R. Co., 29 Conn. 538.

"While a railroad company must be conceded the power to regulate transportation of passengers and freight on its own road, it can not exercise it in such a manner as to unduly advantage certain individuals and exclude others, or to foster a particular industry by crippling another. It will not be allowed to so operate its road or conduct its business as to promote monopoly or stifle competition, for the one is necessarily hurtful to the public, and, therefore,

against public policy, while the other is the best protection to the public. A railroad company is, therefore, without power to enter into a preferential or exclusive contract with any of its patrons. If possessed of such power, railroad companies might, as said by Judge Baxter in the Stock Yards case of L. & N. R. Co. v. Coe, *supra*, 'destroy a refractory manufactory, exterminate, or very materially cripple competition, and in a large measure monopolize and control the several branches of useful commerce, and dictate such terms as avarice may suggest. We think they possess no such power to kill and make alive. Impartiality in serving their patrons is an imperative obligation of all railroad companies, equality of accommodation in the use of railroads is a legal right of everybody. The principle is founded in justice and necessity, and has been uniformly recognized and enforced by the courts. A contrary idea would concede the railroad companies a dangerous discretion, and inevitably lead to intolerable abuses. It would to a limited extent make them masters instead of servants of the people.' * * *

"It is apparent from the evidence appearing in the record in the case at bar, that appellant's compliance with the Bourbon Stock Yards preferential contract, has given that company undue advantage over appellee and thereby injured the latter's business, and, if continued, will cause it greater injury. It is equally apparent from the evidence that the existing facilities of appellant to interchange traffic between its lines and those of the Southern Railway Co. *when it reaches Louisville*, leaves no difficulty in the way of the delivery to appellee of the live stock consigned to it over appellant's road." (Rec. pp. 482 to 484.)

IV.

THE SHIPPER AND OWNER OF PROPERTY, EVEN AFTER THE DELIVERY THEREOF TO A COMMON CARRIER, AND AFTER THE BILL OF LADING HAS BEEN SIGNED AND DELIVERED, OR AFTER THE GOODS HAVE PASSED FROM THE POSSESSION OF THE INITIAL CARRIER INTO THAT OF A SUCCEEDING ONE, MAY EITHER STOP THE SAME IN TRANSIT OR CHANGE THE DESTINATION THEREOF.

It seems to us perfectly clear that the owner and consignor or the consignee has the unquestioned right to stop in transit property before final delivery at its ultimate destination, and can change the destination thereof. Of course, this right of stoppage *in transitu*, or change of destination can only be exercised when the rights of the common carrier having the property in possession are first satisfied, namely: That in all such cases the common carrier has the right to exact the payment of the freight before change of destination or stoppage *in transitu*, and not only to claim the freight, but the freight for the full transportation contracted for by the bill of lading.

On this subject we find in Hutchinson on Common Carriers (2nd Ed.), Section 134, it is said:

> "When there has been no agreement to ship the goods which will make the delivery of them to the

carrier a delivery to the consignee, and vest the property in him, the shipper may, even after the delivery to the carrier and after the bill of lading has been signed and delivered, or after the goods have passed from the possession of the initial carrier into that of a succeeding one, alter their destination and direct their delivery to another consignee, unless the bill of lading has been forwarded to the consignee first named or to some one for his use. But after the carrier or his agent has given one bill of lading or receipt for the goods he can not give another, unless the first and all the duplicates of the same have been returned to him."

Again in Section 337, it is said:

"So long as the goods remain the property of the bailor, he may countermand any directions he may have given as to their consignment and may at any time during the transit require of the carrier their re-delivery to himself; and if such re-delivery can be made without too much inconvenience or expense to the carrier, he will be bound to make it. *A carrier is employed as bailee of a person's goods for the purpose of obeying his directions respecting them, and the owner is entitled to receive them back at any period of the journey when they can be got at. To say that a carrier is bound to deliver goods according to the owner's first directions is a proposition wholly unsupported either by law or common sense.* (Our italics.) I can well understand the case of goods being placed in such a position that they can not easily be got at, though it is usually otherwise. But if the goods are demanded by the owner during the transit, when the carrier is willing and able to fulfill the contract on his part, the latter will be entitled to his full freight for the whole distance to the destination to which they were originally directed, and any expense he may be put to in unloading. If this be tendered, and he refuse to restore the goods, it will amount to a conversion. The owner can not, however, it is said, change the destination and require delivery somewhere else, except upon the basis

of a new contract, after the carrier has completed his undertaking and carried the goods to the destination first agreed upon."

In Sutherland v. Second National Bank of Peoria, 78 Ky. page 250, quoting from the syllabus, it is said:

> "A consignor of goods, after they have passed from the hands of the railroad company with which the contract of affreightment was made, into the hands of another company, has the same right to change their destination while *in transitu*, by taking a new bill of lading, as if the first company had a continuous line to the place of destination."

In the case of the Louisville & Nashville Railroad Co. v. Hartwell, 99 Ky. page 436, quoting from the syllabus, it is said:

> "When, after goods have been received by a carrier for transportation, and before their delivery to the consignee, the shipper gives it notice that they are not to be delivered to the consignee unless the bill of lading is presented by him and a draft for the price of the goods paid, and the goods are delivered to the consignee in violation of this order, the carrier is liable for the value of the goods; and after such notice the presumption no longer obtains that the consignee is the owner of the goods."

And in the case of Strahorn v. Union Stock Yards & Transit Co., 43 Ill. page 424, and 92 Am. Dec. page 142, in the second paragraph of the syllabus, it is said:

> "The consignor of the property *in transitu* has the right to direct a change in its destination, and have it delivered to a different consignee; and the carrier is bound to obey such directions."

These rights of the owner and consignor were fully considered by the chancellor in an elaborate opinion

delivered in the trial court on January 2, 1902 (see Rec., pp. 120 to 130). In the course of that opinion the chancellor, among other things, said:

"Counsel for plaintiff also rely upon Sutherland v. Second National Bank of Peoria, 78 Ky. 250, and Louisville & Nashville Railroad Co. v. Hartwell, 99 Ky. 426, while defendant insists that these cases are not applicable to this case, because the rights of the carrier were not drawn in question, but that the controversies were entirely between shippers and consignees, or their creditors respectively. Counsel for defendant concede the consignor's right to change the consignee, but dispute his right to change the destination. It should be borne in mind, however, that the right here claimed is, in one view, but an application of the common law doctrine of *stoppage in transitu*—a right highly favored in law. Benjamin on Sales, Sec. 830; Smith's Mercantile Law, Sec. 634 (Pomeroy's Ed.) *et seq.*

"If the shipper has the right to stop the delivery of his goods at any time before delivery, he certainly has the right in this case, to stop them at South Louisville, which is some six or seven miles short of the final destination. And, having the right to stop his goods at that point, Section 213 of the Constitution gives him the right to require the defendant to switch or deliver the car to the intersecting road at that point. To hold otherwise would be a failure to give any practical effect to Section 213 of the Constitution.

"On the other hand, if the crossing at South Louisville be treated as a part of the terminal point called for by the bill of lading, as defendant seems to contend, then the delivery of the car at that point to the Southern Railway is a delivery to a different consignee at the end of the journey and not a change in destination, and the Kentucky cases relied on *supra*, are applicable.

"In the instance under consideration, the point of crossing at South Louisville must be considered either as an intermediate point on the line, or as the

destination. If it be the first, the Constitution requires the switching to be made; if it be the latter, the shipper has the right to change the consignee at the destination.

"Upon the broader question, as to the right to change the destination, see Strahorn v. Union Stock Yards & Transit Co., 43 Ill. page 424 (92 Amer. Dec. 142); Michigan Southern & Northern Indiana Railroad Company v. Justin Day, 20 Ill. 375; Lewis v. Galena & Chicago U. R. R. Co., 40 Ill. 281; London & Northwestern Railway Company v. Bartless, 7 Hurlstone & Norman's Reporters, 400; Scothorn v. Railway Co., 8 Exchequer Reports, 345."

It was earnestly contended in the trial court, and will doubtless be the position of counsel for plaintiff in error in this court, that the recognition of the right of stoppage *in transitu* and change of destination when exercised on the part of shippers of live stock destined for the Louisville market and desired to be sold at the plant of defendant in error, would be the requiring of the plaintiff in error the performance of a transfer business, and to compel plaintiff in error to turn over its cars and terminal facilities to the care of other persons, all of which would amount to the taking of its property without due process of law.

The chancellor considered these questions quite elaborately in his final opinion, and reviewed the authorities with such signal ability that reference thereto could not be made better than by the adoption of the said opinion on the subject. In the course of his said opinion he said:

"It is further claimed that to require defendant to switch cars for other roads or persons requires it

to perform a 'transfer' business instead of a transportation business, and that such requirement would compel defendant to turn over its cars and terminal facilities to the care of other persons, and that this amounts to a taking of a defendant's property without due process of law.

"In speaking of defendant's charter and its relation to the State, the United States Supreme Court used this language in L. & N. R. R. Co. v. Commonwealth of Kentucky, 183 U. S. 513:

" 'When the citizens of Kentucky voluntarily seek and obtain a grant from the State of a charter to build and maintain a public highway in the form of a railroad, it would seem to be evident that it takes, holds and operates its road subject to the constitutional inhibition we are considering, and are without power to challenge its validity. It may be that, in a given case, a railroad company may be able to show that the State had disabled itself from enforcing the provision by a contract previously made, and it may be that cases may arise in which the provision can not be enforced because operating as an unlawful interference with commerce between the States. Indeed, those very positions are taken by the plaintiff in error, in this case, and will receive our attention hereafter. But apart from such contentions, and looking only at the case of a company voluntarily formed to carry on business wholly within a State, we are unable to see how such company can successfully contend that it can be exempted by the courts from the operation of the Constitution of the State.

" 'It is said that, while it is true that railroad companies receive their rights to exist and to maintain their roads from the State, yet that their ownership of such roads is property, and, as such, is protected from arbitrary interference by the State. But, though it be conceded that ownership in a railroad is property, it is property of a kind that is subject to the regulations prescribed by the State.' "

If the Constitution can properly require defendant to switch cars, it is immaterial as to what name the business

may be called—whether it be a transportation or a transfer business. If the Constitutional Convention was acting within its powers, it is not for this court to criticise the wisdom or policy of the convention. If it had the power to require a railroad company to do a transfer business, the courts can not say that it ought not to have been done.

It will be noticed that Section 213, *supra*, includes transfer companies as well as railroad and other carrier companies. The switching contemplated does not require defendant to permit other roads to use its tracks, but it may require defendant to switch its cars upon other tracks and to thus be used in the switching. This, I think, may be done as incidental to the operation of a railroad, as was pointed out upon authorities cited in the original opinion (see Rec. pp. 75 to 86). If a railroad can be compelled, as a part of its public service, to take the cars of another road over its line, as was held in the Williams case (95 Ky. 199), it would certainly follow that it could be required to switch its own cars upon the track of another road for delivery purposes. One requirement would, in principle, be as much a taking of property as the other. Switching, as here claimed, is a mere incident to the transportation of goods and requires only a necessary and not an unreasonable use of cars in the delivery of freight after its transportation has been practically completed. As was pertinently said by Mr. Justice Brown in the late case of Minneapolis & St. Louis Rail-

way Company v. Minnesota Railroad and Warehouse Commission, 186 U. S. 261, "it is impossible for the State to exercise this power of regulation without interfering, to some extent, with the power of a railway to contract either with its customers or connecting lines."

It is elementary, that the company takes and holds its franchises and property subject to the conditions and limitations imposed by the State in its Constitution. (Munn v. Illinois, 94 U. S. 113; Davidson v. New Orleans, 96 U. S. 97; Railroad Commission Cases, 116 U. S. 307. L. & N. R. R. v. Kentucky, 183 U. S. 516.) That compulsory switching is not an unreasonable or an unusual use of the cars of one company by another is made plain by the "*per diem*" agreement filed in this case, whereby the railroads of the country, including the defendant, have agreed upon a uniform charge, or rental, for their cars when used by other roads. (See depositions of Edwin Fitzgerald, H. B. Spencer and A. Philbrick, Rec pp. 252, 282, and 288.) The switching clause of the Constitution, when enforced, only requires the defendant to do what it has already agreed to do, and is willing to do and is voluntarily doing for all roads that do not require live stock to be switched to the plaintiff's yards. The switching service does not participate in the through freight rate of the carrier; and in delivering its cars to other roads for delivery purposes, the carrier road, having received its entire freight to the point of delivery, gets the switching service *gratis*. The switching road get

additional pay for the switching service. The authorities cited in the original opinion (Rec. pp. 75 to 86) abundantly sustain the proposition that the State may require this minor use of its rolling stock as a part of the conditions upon which the carrier holds its charter. I have mentioned the matter of switching charges and through freight rates because it has appeared principally in the testimony which has been taken since the original opinion was filed.

As the immediate purpose of this action and the injunction issued herein, related to the delivery of six specified car loads of live stock, shipped from a point in Kentucky to Louisville, Kentucky, the effect of a general order upon shipments coming to Louisville from points in other States was neither argued by counsel nor considered by the court when the order was originally entered. By appropriate amendment, however, the plaintiff now seeks an enlargement of the order of injunction so as to make it apply to all shipments, by requiring the defendant, whenever requested by the consignor and consignee, or owner, of stock at any of its stations, and particularly at the break-up yards in South Louisville, Kentucky, to recognize the right of said parties to stop the property *in transitu*, and to change the destination of said shipment, and that defendant be required to change said destination, and make delivery of said cars at one of the points of physical connection between the tracks of defendant's lines and the tracks of the South-

ern Railway Company, for delivery by that road to the consignee at the Central Stock Yards station.

The right of the parties to exercise the right of stoppage *in transitu*, and the supplemental right to change the destination, were considered and recognized in the second opinion, filed January 2, 1902 (Rec. pp. 120 to 130), in passing upon the question of contempt for violating the order of injunction, and were not argued upon this final submission except in so far as the exercise thereof might affect interstate commerce. It is objected, however, by defendant that the court can not constitutionally so enlarge the order of injunction because it would operate as a regulation of interstate commerce; either directly, by requiring the defendant to "switch" cars which have come to this State from other States, in the same way, that it may require a switching of cars which have brought stock from a point within the State, or indirectly, by requiring defendant to recognize the right to change the destination of cars which have brought stock to Louisville from points beyond Kentucky, and to switch them after they have arrived in Louisville. This objection presents two interesting questions:

1. Is this local switching a part of commerce between States? And (2) if it is, is the requiring it to be done by the State Constitution, such a regulation of commerce as to constitute a violation of the clause of the Federal Constitution which confers upon Congress the power

"to regulate commerce with foreign nations, and among the several States, and with the Indian tribes"?

That a mere switching movement after the main trip has been completed, and for delivery purposes, is a part of commerce between States, may well be doubted. Mr. Justice Miller, in referring to the difference between State and interstate commerce, said:

> "It may be thus stated: That the power to regulate commerce is one which includes many subjects, various and quite unlike in their nature; that whenever subjects of this power are in their nature *national*, or *require one uniform system or plan* of regulation, they may be justly held to belong to that class over which Congress has the exclusive power of legislation; but that *local and limited matters*, not national in their character, which are most likely to be wisely provided for by such diverse rules as the localities and authorities of the different States may deem applicable, may be regulated by the legislatures of those States in the absence of any act of Congress upon the same subject." ("Lectures on the Constitution," p. 454.)

If plaintiff were asking that the defendant be required to switch cars passing through Louisville for further transportation into other States, it might be contended that it was interstate commerce; but in the case at bar, where the switching is a mere delivery at the end of the trip, and for final purposes, isn't it a purely local and limited matter, which can not possibly affect further transportation?

Leaving that question open, however, and conceding, for the sake of the argument, that the switching is a part

of commerce from a shipment made, say, in Tennessee, is it a forbidden regulation of that commerce?

When Mr. Madison's attention was called, near the close of the Convention of 1787, to the scope and meaning of the phrase "to regulate commerce" in connection with the proposition to restrain the States from laying tonnage duties without the consent of Congress, he said: "These terms are *somewhat obscure*"; but in revising his remarks, he made them read: "These terms are *vague*, but seem to exclude this power of the States." (Documentary History of the Constitution, III, 752; Madison's Papers, III, 1585.) Nevertheless, the Convention did not agree with Mr. Madison, and the express prohibition upon State tonnage duties was carried and inserted in the instrument, the Convention evidently being of opinion that the power of Congress to regulate commerce among the States, did not, *ex vi termini*, preclude the States from levying tonnage duties. This interesting bit of information constitutes about all of the debate upon the scope and meaning of this important clause. Indeed, the express power to regulate commerce did not appear either in the Virginia plan, presented by Governor Randolph at the opening of the Convention, or in the nineteen resolutions reported to the Convention by the Committee of the Whole on June 13th, after a two weeks' debate upon the Virginia plan. When the report of the committee had been further debated by the house for six weeks longer, and was, on July 26th,

referred to the Committee of Detail in twenty-three resolutions to draft a Constitution, the commerce clause did not yet appear. It first appeared on August 6th in the draft of a Constitution by the Committee of Detail, and in substantially the form in which it now appears in the Constitution. It thus appears to have come into the Constitution after all the principal features of it had been three times debated, and the wording of it was given little or no discussion. (Meigs' "The Growth of the Constitution," 135.)

It is not a matter of surprise, therefore, that considerable confusion of thought and difference of opinion has arisen in applying this important constitutional power. The great subject of railroad transportation was wholly unknown to the framers of the Constitution. Foreign and coasting trade was their chief concern and were carried on entirely by means of sailing vessels. "And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure *uniformity of regulation against conflicting and discriminating State legislation.*" (Mobile County v. Kimball, 102 U. S. 691.) For some time several of the States had been making commercial war upon each other. Connecticut threw her ports wide open to British shipping, but laid a duty upon imports from Massachusetts. Pennsylvania discriminated against Delaware. New York required every little market boat loaded with garden truck

from New Jersey to pay entrance fees and obtain clearances at the customhouse just as was done by the great ships from London, and while all firewood from Connecticut was compelled to pay a heavy duty, New Jersey retaliated by levying a confiscatory tax upon New York's lighthouse, located on Sandy Hook, while Connecticut suspended all commercial intercourse with her greedy neighbor. It was such bickerings as these that largely influenced the calling of the Federal Convention, and this certainly brought about the adoption of that part of the commerce clause that confided to Congress the regulation of commerce among States. The cardinal idea and intention was to put an end to all laws whereby any one State was discriminating against the citizens of other States and in favor of its own citizens. As a part of this regulation of commerce, it necessarily followed that goods carried from one State into another State, or through a second and into a third State, should not be impeded or obstructed while passing through upon its journey. But there are certain rights, known as the police power of the State, which the State may nevertheless exercise, although it may interfere with interstate commerce. State laws regulating quarantine, inspection, pilotage, wharfage, and public convenience and for the protection of the lives, health, morals, safety and property of its people are of this class.

The opinion of Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1 (1824), and the opinion of Mr. Justice

Curtis in Cooley v. The Board of Wardens of the Port of Philadelphia, 12 How. 299 (1851), contain the reason and the philosophy of the law upon this subject. These opinions are in accord with the evident intention of the framers of the Constitution; since Story says it was moved in the Convention to amend the article so as to give Congress "the sole or exclusive" power over commerce, but that the proposition was rejected by the vote of six States against five. (Comm. on Constitution, Sec. 1067, Note.) See Russell's "Police Power of the State," 1900.

Furthermore, "the power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government, is to be determined by the same rules." (Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285-300; Hennington v. Georgia, 163 U. S. 299.)

Referring to laws of this character in Gibbons v. Ogden, 9 Wheat. 1-203 (1824), Chief Justice Marshall said:

> "No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is *expressly given for a special purpose*, or is *clearly incidental* to some *power* which is *expressly given*. It is obvious that the government of the Union, in the exer-

cise of its express powers—that, for example, of regulating commerce with foreign nations and among the States—may *use means that may also be employed by a State in the exercise of its acknowledged powers;* that, for example, of regulating commerce *within* the State. If Congress licenses vessels to sail from one port to another in the same State, the act is supposed to be necessarily incidental to the power expressly granted to Congress, and implies no claim of a direct power to regulate the purely internal commerce of a State, or to act directly on its system of police. So, if a State, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, *it does not derive its authority from the particular power which has been granted to Congress,* but *from some other which remains with the State,* and *may be executed by the same means.* All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distant powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other *so nearly as to be confounded,* there are other situations in which they are sufficiently distinct to establish their individuality. In our complex system, presenting the rare and difficult scheme of our general government, whose action extends over the whole, but which possesses only certain enumerated powers; and of numerous State governments which retain and exercise all powers not delegated to the Union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective governments to execute their *acknowledged* powers would often be of the same description, and might sometimes interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

The foregoing passage is an excellent general chart for us in all cases of this character. It is frequently,

however, quite difficult to distinguish between domestic and interstate commerce, or where one ceases and the other begins, or what constitutes a regulation of commerce. The Chief Justice evidently had such cases in mind when he said, "although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are *other situations* in which they are sufficiently distinct to establish their individuality."

In Livingston & Fulton v. Van Ingen, 9 Johns. 507 (1812), Chief Justice Kent, in reviewing the commerce clause of the Federal Constitution, said:

> "Upon the principles above laid down, the States are under no other constitutional restriction, and are, consequently, left in possession of a vast field of commercial regulation; all the internal commerce of the State by land and water remains entirely, and I may say exclusively, within the scope of its original sovereignty. The congressional power relates to external, not to internal, commerce, and it is confined to the regulation of that commerce. To what extent these regulations may be carried, it is not our present duty to inquire. The limits of this power seem not to be susceptible of precise definition. It may be difficult to draw an exact line between those regulations which relate to external and those which relate to internal commerce, for *every regulation of the one will directly or indirectly affect the other.* To avoid doubts, embarrassment, and contention on this complicated question, the general rule of interpretation which has been mentioned, is extremely salutary. It removes all difficulty, by its simplicity and certainty."

Most of the State regulations of interstate commerce which have been determined to be obnoxious to the Fed-

eral Constitution relate to either navigation, taxes, or charges in transportation in some one of its forms; fixing of unreasonable compensation for services; discriminations against other States; duties on tonnage; and duties on imports and exports. The case under consideration is relieved of most of these difficulties. No tax burden, discrimination, or charge is imposed; the regulation consists merely of a police regulation intended by the State to conserve the public interests in the aid of commerce.

In applying the rule to these "other situations," it is still sometimes quite difficult to establish the individuality of the one or other power which has been constitutionally exercised, or whether the thing or act regulated is domestic or interstate commerce. The line of distinction is frequently quite shadowy and difficult of determination. Thus, in W. U. Tel. Co. v. Texas, 105 U. S. 460, the sending of telegraphic messages from one State to another was interstate commerce; and in Robbins v. Shelby Co. Tax. District, 120 U. S. 489, a drummer "going from State to State, making sales by samples," was likewise engaged in interstate commerce; while in Hopkins v. U. S., 171 U. S. 578, 601, a solicitor going from one State to another State and procuring goods to be shipped back to the first State for sale, was not engaged in interstate commerce. There nevertheless are some well settled rules of construction, which may aid us very materially in the determination of the case in

hand, though they do not control it directly. Assuming that the thing or act regulated belongs to the category of interstate commerce and that the regulation is not a permissible police regulation, the regulation must, nevertheless, be a burden upon or an impediment to the interstate commerce, instead of an aid or facility to it, and it must, furthermore, affect it directly and not merely by indirection.

In Mobile County v. Kimball, 102 U. S. 702, Mr. Justice Field, in reviewing the early contention that the right of Congress to regulate interstate commerce was exclusive, and not concurrent with the right of the States to do so in the absence of congressional action, and of the final conclusion that it depended upon the nature of the subject to be regulated, said:

> "Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as *strictly* defined, and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in those terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as *thus defined* may not be inaccurate, *when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce.*"

In N. Y., N. H. & H. R. R. Co. v. New York, 165 U. S. 628, the question was as to the validity, when applied to interstate trains, of a New York statute forbidding the heating of passenger cars in a particular mode. The court said:

> "The statute in question is not directed against interstate commerce. Nor is it within the meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation *in aid of commerce* and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations *within its limits.*"

Hopkins v. United States, 171 U. S. 578, was an action for the dissolution of the Kansas City Live Stock Exchange; and although it was brought under the Anti-Trust Act of 1890, it became necessary for the court to first determine whether the business of the Exchange was interstate commerce; and in that respect the opinion is useful in this case. In the course of the opinion Mr. Justice Peckham said:

> "We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is *an aid or facility to commerce,* and which, if it affect interstate commerce at all, does so only in an indirect and incidental manner? * * * An agreement may in a variety of ways affect interstate commerce, just as State legislation may, and yet, *like it,* be entirely valid, because the

interference produced by the agreement, or by the legislation, is not direct (cases cited). * * * There must be some direct and immediate effect upon interstate commerce in order to come within the act. * * * Many agreements suggest themselves which relate only to facilities furnished commerce, or else touch it only in an indirect way, while possibly enhancing the cost of transacting the business, and which at the same time we would not think of as agreements in restraint of interstate trade or commerce. They are agreements which in their effect *operate in furtherance and aid of commerce*, by providing for it facilities, conveniences, privileges, or services, but which do not directly relate to charges for its transportation, nor to any other form of interstate commerce. * * * The effect upon the commerce spoken of must be direct and proximate (N. Y., L. E. & W. R. Co. v. Pennsylvania, 158 U. S. 431). * * * Facilities may consist in privileges provided and made use of, or in services rendered in aid of commerce, as well as in the use of tangible property, and so long as they are facilities and the charges not unreasonable an agreement relating to their amount is not invalid. * * * If charges of the nature described do not amount to a regulation of interstate trade or commerce because they touch it only in an indirect and remote way, or else because they are in the nature of compensation for the use of property or privileges as a mere facility for that commerce, it would for a like reason seem clear that agreements relating to the amounts of such charges, among those who furnish the privileges or facilities, are not in restraint of that kind of trade. While the indirect effect of the agreements may be to enhance the expense to those engaged in the business, yet as the agreements are in regard to compensation for privileges accrued for services rendered as a facility to commerce or trade, they are not illegal as a restraint thereon. * * * Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know, from the cases decided in this court, that it is a term of very large significance. It compre-

hends, as it is said, intercourse for the purposes of trade in any and all of its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted. (Cases cited.)

"But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local *facility* provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

In L. & N. R. R. Co. v. Kentucky, 161 U. S. 677, 701, the State enjoined a proposed agreement for the consolidation of the appellant's road with certain other railroads, which extended from Kentucky into the State of Tennessee. It was contended that Section 201 of the Kentucky Constitution, which forbade the purchasing of competing railroads, is a regulation of interstate commerce, and therefore void.

In answering that contention, Mr. Justice Brown, speaking for the court, said:

"But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. *All such regulations interfere indirectly, more or less, with commerce between the States,* in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon

railways and their rolling stock, which are, more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might, perhaps, lead to an inference that the police power can not be exercised over a subject confined exclusively to Congress by the Federal Constitution. But, while this is true with respect to the commerce itself, it is not true with respect to the instruments of commerce. * * * It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways of the country have been constructed under State authority, and it can not be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce, and to forbid interference therewith; while to the States remains the power to create and regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

In Louisville & Nashville R. R. Co. v. Kentucky, 183 U. S. 503, 518, the appellant contended that Section 218 of the Kentucky Constitution, prohibiting a road from charging more for a short haul of freight than for a long one, was void because it interfered with interstate commerce. Upon that point Mr. Justice Shiras, in speaking for a unanimous court, said:

"The final contention, that Section 218 of the Constitution of Kentucky operates as an interference with interstate commerce, and is therefore void, need not detain us long.

"It is plain that the provision in question does not in terms embrace the case of interstate traffic. It is restricted in its regulation to those who own or operate a railroad within the State, and the long and short distances mentioned are evidently distances upon the railroad line within the State. The particular case before us is one involving only the transportation of coal from one point in the State of Kentucky to another by a corporation of that State. It may be that the enforcement of the State regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may *somewhat affect commerce generally;* but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government, to be unlawful, *must be direct,* and not the mere incidental effect of enforcing the police powers of a State. (N. Y., L. E. & W. R. Co. v. Pennsylvania, 158 U. S. 431; Henderson Bridge Co. v. Kentucky, 166 U. S. 150.) A discussion of this subject will be found in the opinion of this court in Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S. 701, where the same conclusion was reached."

It would seem sufficient to rest the decision of the case at bar upon the authority of the two cases last above quoted, for it is difficult to distinguish between them, in principle. If a car loaded with coal is a mere instrument of interstate commerce, which Section 218 of the Kentucky Constitution can regulate as to charge for hauling it while traversing the State, it is equally plain that a car loaded with cattle is also a mere instrument of commerce and can be switched at its destination under

Section 213 of the same Constitution. The latter instance is a no greater exercise of the police power than the former, if, indeed, it can be said to be as great. The appositeness of the coal case, however, to the case at bar consists in the fact that the instrument of commerce in the two cases is identical. In each case the corporation is the same; is a creation of the State of Kentucky, and the regulation is intended as an exercise of its police power for the benefit of its citizens. Nor is there any distinction between the case of a railroad company incorporated before and that of one incorporated after the constitutional enactment. "As has been said of the one, so it may be said of the other, that the charter is taken and held subject to the power of the State to regulate and control the grant in the interest of the public." (183 U. S. 517; Pa. R. R. v. Miller, 132 U. S. 75; Louisville Water Co. v. Clark, 143 U. S. 1; L. & N. R. R. Co. v. Kentucky, 161 U. S. 677.)

Lake Shore & Mich. Southern R'y Co. v. Ohio, 173 U. S. 285 (1898), is an interesting case, and bears upon the question. There the State of Ohio, by statute, required railroad companies to stop at least three of their trains, going each way (if so many were run), at every city having over 3,000 inhabitants. A train belonging to defendant, and going from New York to Chicago, having failed to stop, as required by statute, suit was brought to recover the penalty prescribed for the breach of the statute. It was contended that the statute was

void, as a regulation of interstate commerce. After a review of all the leading cases upon the subject, Mr. Justice Harlan, in delivering the opinion of the court, said, page 300:

"Consistently with these doctrines it can not be adjudged that the Ohio statute is unconstitutional. The power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government is to be determined by the same rules.

"In what has been said we have assumed that the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, does not go beyond the necessities of the case, and is not directed against interstate commerce. * * *

"In our judgment the assumption that the statute of Ohio was not directed against interstate commerce but is a reasonable provision for the public convenience, is not unwarranted. The requirement that a railroad company whose road is operated within the State shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at any station, city, or village of 3,000 inhabitants, for a time sufficient to receive and let off passengers, so far from being unreasonable, will greatly subserve the public convenience. * * * We perceive in the legislation of Ohio no basis for the contention that the State has invaded the domain of national authority or impaired any right secured by the national Constitution. In the recent case of Jones v. Brim, 165 U. S. 180, 182, it was adjudged that, embraced within the police powers of a State was the establishment, maintenance, and control of public highways, and that under such powers reasonable regulations incident

to the right to establish and maintain such highways could be established by the State. And the State of Ohio by the statute in question has done nothing more than to so regulate the use of a public highway established and maintained under its authority as will reasonably promote the public convenience. It has not unreasonably obstructed the freedom of commerce among the States. Its regulations apply equally to domestic and interstate railroads. *Its statute is not directed against interstate commerce, but only incidentally affects it.* It has only forbidden one of its own corporations from discriminating unjustly against a large part of the public, for whose convenience that corporation was created and invested with authority to maintain a public highway within the limits of the State."

What has there been said applies with equal force to the case under consideration. The Kentucky Constitution is not directed against interstate commerce, but only incidentally affects it, in the exercise of the police power of the State, as against a corporation of its own creation and for the convenience of the public. That the State has abundant power to do so, is established by the following decisions, which I will merely cite, in addition to those already referred to, viz.: Sherlock v. Alling, 93 U. S. 99; Morgan's L. & T. R. & S. S. Co. v. Louisiana Board of Health, 118 U. S. 455; Smith v. Alabama, 124 U. S. 465; Nashville, C. & St. L. R. Co. v. Alabama, 128 U. S. 96; Mo., K. & T. R'y Co. v. Haber, 169 U. S. 613. They were all cases involving State regulations more or less affecting interstate or foreign commerce, but were sustained upon the ground that they were not directed against, nor were direct burdens upon, interstate or foreign commerce.

The Court of Appeals of Kentucky fully considered this question of right of stoppage *in transitu*, reviewed the authorities as stated in the Chancellor's opinion, liberally quoted from, *supra*, and concluded its opinion with respect thereto in words and figures as follows:

> "We do not understand it to be denied by counsel for appellant that the consignor may change the consignee; but it is denied that he can change the destination, and insisted that if the exercise of the right to change either requires of it the performance of the switching duties demanded by appellee under Section 213 of the Constitution, it will amount to a regulation of interstate commerce.
>
> "*When a shipment is made from another State and reaches appellant's break-up yards in Louisville, the shipper has a right to demand there his stock. When he does make this demand the interstate shipment is ended, and if he there demands it, he has a right, under the laws of this State, to have the stock delivered by appellant to another carrier with whose road it then has physical connection, to be shipped to another point in Louisville or within the State, upon reasonable charges. This shipment within the State is not interstate commerce.* (Our italics.) If in a shipment from Tennessee to Louisville, the shipper had stopped the car at Elizabethtown, no doubt would exist of his right to take the stock, and if he then shipped it to another point in the State, it would not be material that the first shipment was from Tennessee." (Rec. pp. 487-488.)

We print herewith as an appendix to this brief the full opinion of the Chancellor on final submission and opinion of the Court of Appeals, and when considered in connection with the numerous authorities therein reviewed, with the conclusion of the Court of Appeals reached therefrom, we think it perfectly manifest that

the decree appealed from in no manner interferes with any right of the plaintiff in error accruing to it under the Interstate Commerce Act, nor is the same violative of the Fourteenth Amendment to the Constitution of the United States.

V.

RES ADJUDICATA.

It will be insisted that the opinion of this court in the case of Central Stock Yards Company v. Louisville & Nashville Railroad Company, 192 U. S. 568, and Same v. Same, 118 Fed. Rep. 113, was and is conclusive of the rights of the parties hereto.

The plaintiff in error in its petition for a rehearing in the Court of Appeals of Kentucky, and in its petition for an allowance of a writ of error in this case to this court merely relied upon the principle of *res adjudicata* applicable to this case. We think that counsel for plaintiff in error misconceives the opinion of the Court of Appeals of Kentucky, and when the opinion of that court is considered in connection with the facts as disclosed in the record that the principle and doctrine of *res adjudicata* has no applicability.

We understand the law to be, and it is conceded to be in the dissenting opinion of one of the Judges of the Court of Appeals, and by plaintiff in error in its petition for a rehearing in that court, that the Court of Appeals of Kentucky, and court of last resort of that State, had

the exclusive right to finally construe and interpret its own Constitution and statute, and that that court could not be bound, and is not bound by the construction of its Constitution or statute by this court, but that in all cases it is firmly established by an unbroken line of decisions of this court that this court will, after the court of last resort of a State has construed its Constitution or statutes, for the purpose of any Federal question which may arise thereon, adopt the construction of the court of last resort of the State.

The decision of this court in the cases referred to, and between the parties hereto, was upon an abstract question of law independent of the merits of the controversy, and only pertained to interstate commerce.

We contend:

1. That to constitute *res adjudicata* the judgment or decree interposed as such must be by a court possessed not only of jurisdiction over the subject-matter and the parties, but with concurrent power and authority to finally construe the State constitutional provisions or statutes involved.

2. That the Court of Appeals of Kentucky alone had the power and right to finally construe its Constitution and statutes.

3. That this court in the cases referred to had the power to determine the rights of the parties hereto as to interstate shipments, and that no right accorded plaintiff in error by that decree is disturbed by the decree or judgment of the Court of Appeals of Kentucky.

4. That the rights of the parties hereto under the Kentucky Constitution and statutes, as interpreted by the Court of Appeals of Kentucky in the judgment on review, can be enforced in Kentucky without affecting plaintiff in error's duties in any other State.

5. That the rights accorded defendant in error under the opinion of the Court of Appeals of Kentucky pertain purely to local duties of plaintiff in error, and is within the police power of the State of Kentucky and enforceable by its courts.

6. That by the opinion of the Court of Appeals of Kentucky there was no failure to give full faith and credit to the Federal court decree between the parties hereto relied upon as *res adjudicata.*

In the case of Smith v. Auld, 31 Kas. 262, Judge Brewer of that court, now Mr. Justice Brewer of this court, said:

> "The whole philosophy of the doctrine of *res adjudicata* is summed up in the mere statement that a matter once decided is finally decided, and all the learning that has been bestowed, and all the rules that have been laid down, have been for the purpose of enforcing that one proposition."

We subscribe to this definition of the meaning of *res adjudicata,* but earnestly contend that the matter once decided must be by a court with authority to finally decide in all of its aspects the rights of the parties involved, and that such decision must be upon the merits.

A judgment in an action prosecuted upon an erro-

neous theory is no bar to the same action prosecuted subsequently upon a different theory.

Mr. Black on Judgments (2nd Ed.), Section 733, says:

> "As we have already intimated, cases not infrequently arise in which a party, acting upon *a certain theory* as to his legal rights, or as to the legal effects of a given state of facts or transaction, brings his action and is defeated, being unable to substantiate his view of the case, and afterwards renews the litigation, without any change in the facts, but basing his claim on a *new and more correct theory. In such a case the former judgment is no bar to the second action.* It is true the subject-matter is the same, but the cause of action set up in the former suit was, as shown by the result, merely illusory and suppositious, and hence it can not be considered as identical, in any just sense of the term, with the true cause of action correctly set up and supported *by a right theory of the facts.*" (Our italics.)

The leading case in this country, cited in nearly all the cases and forming the foundation in all the text-books of the distinction to be drawn between the *conclusiveness of a judgment as a bar* to the same cause of action and its *conclusiveness in evidence of the fact established between the same parties*, is the case of Cromwell v. County of Sac, 94 U. S. 351, in which the opinion was delivered by Mr. Justice Field. That was an action on four bonds of the county of Sac in the State of Iowa, each for $1,000 and four coupons of interest attached thereto, each for $100. To defeat the action, the defendant relied upon the estoppel of a judgment rendered in favor of the county in a prior action brought by one Samuel C. Smith upon certain earlier maturing coupons on the same bonds,

accompanied with proof that the plaintiff, Cromwell, was the owner of the coupons in that action and that the action was prosecuted *for his sole use and benefit*. In holding that the prior judgment was no bar, the court laid down the principle distinguishing a judgment, constituting a *plea in bar of the same cause*, from a judgment establishing a fact in litigation between the same parties, when the subsequent cause of action is not the same. The court there said:

> "It is not believed that there are any cases going to the extent that, because in the prior action a *different* question from that actually determined *might have arisen* and been litigated, therefore, such *possible question* is to be considered as *excluded from consideration in a second action between the same parties on a different demand*, although loose remarks looking in that direction may be found in some opinions. *On principle, a point not in litigation in one action can not be received as conclusively settled in any subsequent action upon a different cause*, because it might have been determined in the first action.
>
> "Various considerations, other than the actual merits, may govern a party in bringing forward grounds of recovery or defense in one action, which may not exist in another action upon a different demand, such as the smallness of the amount or the value of the property in controversy, the difficulty of obtaining the necessary evidence, the expense of the litigation, and his own situation at the time. A party acting upon considerations like these ought not to be precluded from contesting, in a subsequent action, other demands arising out of the same transaction. A judgment by default only admits for the purpose of the action the legality of the demand or claim in suit; it does not make the allegations of the declaration or complaint evidence in an action upon *a different claim*. The declaration may con-

> tain different statements of the cause of action in different counts. It would hardly be pretended that a judgment by default in such a case would make the several statements evidence in any other proceeding." (Our italics.)

Our Court of Appeals in its opinion, under review, after an elaborate consideration of the authorities relied upon in support of the doctrine of *res adjudicata*, concluded its opinion in words as follows:

> "The conclusion deducible from the foregoing authorities is that Section 213 of the Kentucky Constitution, requiring interchange and switching of cars, is a valid exercise of the police power of the State; that it is not intended to affect interstate commerce, and that such effect as it may have thereon is purely incidental and indirect, and this being true, it is not to be regarded as a regulation of interstate commerce within the meaning of the Federal Constitution or Interstate Commerce Act."

In the case of Fairfield v. County of Gallatin, 100 U. S. 47 to 55, it appeared that the Constitution of the State of Illinois was first construed by the Supreme Court of the United States, and afterwards the Supreme Court of the State of Illinois construed the Constitution differently from the Supreme Court of the United States, and the question was, therefore, fairly presented as to whether this court should follow its own interpretation as to the meaning of the Constitution of the State of Illinois or adopt the construction of the said constitutional provision placed thereon by the Supreme Court of the State of Illinois, and in the course of the opinion this court, speaking through Mr. Justice Strong, said, at page 50:

"We are fully aware that it is the peculiar province of the Supreme Court of a State to interpret its organic law, as well as its statutes, and that it is the duty as well as the pleasure of this court to follow and adopt that court's interpretation." (Our italics.)

And further, at page 52, it is said:

"At a very early day it was announced that in cases depending upon the Constitution or statutes of a State this court would adopt the construction of the statutes or Constitution given by the courts of the State, when that construction could be ascertained. Polk's Lessee v. Wendell, 9 Cranch, 87. In Nesmith v. Sheldon (7 How. 812) it is declared to be the 'established doctrine that this court will adopt and follow the decisions of the State courts in the construction of their own Constitution and statutes, and when that construction has been settled by the decisions of its highest tribunal.' In Walker v. State Harbor Commissioners (17 Wall. 648) we said: 'This court follows the adjudications of the highest court of the State' in the construction of its statutes. 'Its interpretation is accepted as the true interpretation, whatever may be our opinion of its original soundness.' See, also, Elmendorf v. Taylor, 10 Wheat. 152; Green v. Neal's Lessee, 6 Pet. 291; Leffingwell v. Warren, 2 Black, 599; Sumner v. Hicks, Id. 532; Olcott v. The Supervisors, 16 Wall. 678; State Railroad Tax cases, 92 U. S. 575."

The only exception to this general rule, as stated by this court, is that where this court construes the Constitution or statutes of a State prior to any construction placed thereon by the Supreme Court of a State and contracts are made in accordance with such construction as placed thereon by this court, and are entered into in good faith, that the rights of the parties will be governed by such interpretation as to such contract regardless of

a subsequent and different construction of the Constitution by the State; or, in other words, that the final interpretation placed upon the Constitution or statutes by the court of last resort of a State will not be given a retroactive effect as to allow such subsequent construction to invalidate contracts entered into in good faith in pursuance to the construction placed upon the Constitution or statutes by this court.

A striking illustration of this exception is afforded by reference to the case of Rowan, etc., v. Runnels, 5 How. 134. We have no such question presented in this record, nor have we a question of general commercial law.

In the case of Green v. Neal's Lessee, 6 Pet. 291, the question was also presented as to whether or not this court would adhere to its own construction or follow the construction by the court of last resort of a State.

This court in the case, *supra,* of Fairfield v. County of Gallatin, reviewed those decisions, adhered to the rule as announced by Mr. Justice Strong as quoted *supra,* and further said, at pages 54 and 55:

> "And it has been held that this court will abandon its former decision construing a State statute, if the State courts have subsequently given to it a different construction. In Green v. Neal's Lessee (6 Pet. 291) the question raised was whether the court would adhere to its own decision in such a case, or would recede from it and follow the decisions of the State court. In two previous cases a certain construction had been given to a statute of Tennessee in supposed harmony with decisions of the State court. But subsequently it was decided otherwise by the State Supreme Court; and it ap-

peared that the decisions upon which this court had relied were made under peculiar circumstances, and were never in the State considered as fully settling the construction of the Act. This court, therefore, overruled its former two decisions, and followed the later construction adopted by the State court. See, also, Suydam v. Williamson, 24 How. 427."

It should be observed further that in the case between the parties hereto and relied upon as *res adjudicata* the same differs materially from the case now upon review in a number of particulars:

First. There was no proof taken in that case, and it was not determined upon the merits, but as an abstract proposition of law.

Second. It did not appear in that case, as it does in this, that the plaintiff in error and the Southern Railway Company, and other railway companies entering the city of Louisville, were under contract between themselves for the benefit of the public generally whereby they were obligated, upon terms named, to interchange cars loaded with live stock, and, indeed, cars of every character for delivery purposes within the switching limits of a terminal point, as is shown from the per diem rules.

Third. It did not appear in that case, as in this, that the plaintiff in error had acquired its terminals, the use of which is exacted by the decree in question, under a charter to the Louisville Railway Transfer Company wherein and whereby whomsoever used the said terminals were obligated to freely switch, as demanded

by the decree, and at the rates as have been voluntarily fixed by the plaintiff in error, which, as a coincident, happen to be precisely the same as fixed in the charter to the Louisville Railway Transfer Company, all of the obligations of which were assumed and now rest upon the plaintiff in error.

Fourth. It did not appear in that case, as in this, that the right to operate trains over the old Louisville Railway Transfer Company, now the terminals of the plaintiff in error, was acquired by contract with the city of Louisville, wherein and whereby the users of the said terminals were obligated to freely interchange cars for switching and delivery purposes.

Questions of public policy as affecting the liability for acts done or omitted to be done by a quasi public or railroad corporation within one of the States of the Union are not controlled by the Constitution or laws or treaties of the United States, or by the principle of commercial or mercantile law, or of general jurisprudence of national or universal application, but must of necessity be determined and governed by the law of the States as embraced in their constitutions and statutes as interpreted by the highest court of such States.

In the case of In Re Duncan, 139 U. S. 499, this court held whether a State constitutional provision or statute is of binding force is for the State courts to determine alone, and that the Federal court, after such construction by the State court, will adopt the same. See, also,

Leeper v. Texas, 139 U. S. 462.
Bucher v. Railroad Co., 125 U. S. 555.
Louisville, etc., R'y Co. v. Miss., 133 U. S. 587, and
Beauregard v. New Orleans, 18 How. 499.

The test in all cases, in the enforcement of a police regulation within a State, is whether or not the particular statute regulation can be fully carried out and obeyed without in any manner affecting the conduct of the company with regard to the performance of its duties in other States. When this test is applied to the constitutional provisions now presented for consideration, it will readily be seen that their enforcement in no way regulates the duty of the plaintiff in error in any other State; but that, on the contrary, the same is purely a local and switching regulation that is directed particularly to the instrumentality, and not against the commerce itself, but only says to all common carriers that, when you bring freight to any point within the State of Kentucky, for delivery purposes, you must freely transfer, switch, and deliver the same to and from all connecting carriers with which your tracks have a physical connection. The enforcement of these requirements can not operate in any loss of freight to the initial carrier bringing the same to a point of destination, because in all such cases, as is conceded from the proof in this case, the initial carrier (plaintiff in error) gets its full Louisville rate, but instead of carrying the live stock, after it reaches the break-up yards in South Louisville, a distance of over four miles to the Bourbon Yards, that

it will, in accordance with the request of the owner of that live stock, move it about a mile and a half, to Seventh and Magnolia streets, where it shall deliver it to the Southern Railway Company for delivery at defendant in error's yards, within the switching limits of the city of Louisville.

The cases of Western Union Tel. Co. v. James, 162 U. S. 650; Wis., etc., R'y Co. v. Jacobson, 179 U. S. 287; Lake Shore, etc., R'y Co. v. Ohio, 173 U. S. 285; Smith v. Alabama, 124 U. S. 465; Sherlock v. Alling, 93 U. S. 99; Minneapolis, etc., R'y Co. v. Minn. R. R. & W. Com., 186 U. S. 257; Chicago, etc., R. R. Co. v. Solan, 169 U. S. 133, are all cases supporting our position.

It is demonstrated from the testimony, and the opinion of the Court of Appeals of Kentucky based thereon, that if the defendant in error can only obtain its live stock by having the same rebilled from the Bourbon Yards in the city of Louisville to the plant of defendant in error, that it will require a further movement of about eight miles. It will also be necessary for the defendant in error to obtain a rebilling of the live stock from the Bourbon Yards to its plant, to have sent to the Bourbon Yards a Southern Railway Company car, which would require a further movement, and necessary only for switching and delivery, of at least one half that distance, making indispensable to the delivery an additional transportation of a car for about twelve miles, and under such conditions we think it perfectly manifest from the

facts, which were not before the court in the former litigation between the parties hereto, that the case clearly comes within the imaginary case as stated by Mr. Justice Holmes in his opinion as follows:

> "It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might be regarded as *bona fide* further transportation over a connecting road and within the requirements of the Kentucky Constitution."

If this imaginary state of case is not presented by the facts in this record, it would be practically impossible to have such case presented within any city in the United States.

We respectfully ask that the judgment be affirmed.

JOSEPH C. DODD,

JOHN L. DODD,

Attorneys for Defendant in Error.

APPENDIX, PART I.

Court of Appeals of Kentucky.

NOVEMBER 15, 1906.

(TO BE REPORTED.)

LOUISVILLE & NASHVILLE RAILROAD CO., - *Appellant,*

vs. APPEAL FROM JEFFERSON CIRCUIT COURT, CHANCERY (1ST) DIVISION.

CENTRAL STOCK YARDS COMPANY, - - - *Appellee.*

OPINION OF THE COURT BY JUDGE SETTLE.

In this action the appellee, Central Stock Yards Company, sought and was granted by the court below a mandatory injunction against appellant, Louisville & Nashville Railroad Company, compelling it to switch and deliver to the Southern Railway Company in Kentucky, at points of connection between the tracks of the two railroads, in or near the city of Louisville, certain car loads of live stock which had been shipped over appellant's road to appellee, and also requiring appellant in like manner to make future delivery of like freight shipped over its roads and consigned to appellee, or that might be offered it for shipment and delivery to appellee's stock yards.

The plant of appellee, known as the Central Stock Yards, is located upon the line of the Southern Railway in Kentucky, about nine miles from its terminus in the city of Louisville, near and outside the city limits.

The plant is modern and well equipped for appellee's business, which is that of feeding, watering, loading, unloading, and handling live stock of every description, on commission. The "break-up" yards of appellant railroad company are near the intersection of 4th and G streets, in South Louisville, and not more than 100 yards from appellee stock yards. At the point indicated the tracks of appellant and those of the Southern Railway intersect. At 7th and Magnolia streets, about one and one half miles northeast of the "break-up" yards, there is also physical connection by switch between the tracks of the two railroads, and for quite a while it has been their custom to transfer cars at this place of connection.

It appears that appellant's lines of railroad extend through more of the counties of Kentucky than those of any other railroad operated in the State; that these are the counties in which live stock is principally raised, and that more than 50 per cent. of all the live stock raised in the State can only reach the stock markets over appellant's line.

It is charged in the petition that appellant has declined to receive, and announced its purpose to continue to reject, at any station on its lines, any live stock billed or to be transported, transferred or switched to the Southern Railway Company, or any other connecting carrier at Louisville, for delivery by such railway or carrier to appellee stock yards, and that in keeping with its past conduct and future intentions in this regard, appellant has distributed printed circulars throughout the country advising stock shippers and dealers not to ship, and instructing its station agents and employes not to receive, bill, transport, transfer or switch, any live stock at or to any of the points of physical connection between its

lines and those of the Southern Railway Company in Kentucky, at Louisville, for delivery by that company, to appellee or at its yards. That appellant will receive, bill and transport to Louisville live stock tendered it for shipment to appellee or to any person at its stock yards, but when such stock reaches Louisville it refuses to deliver it to the connecting common carrier, the Southern Railway Company, or to deliver to the latter company the instructions of the consignor, and in all such instances, over the protest of the consignor, makes delivery thereof to the Bourbon Stock Yards Company in Louisville, a rival and competitor in business of appellee, whose place of business is at a point distant several miles from that of appellee.

It is further alleged in the petition that the acts and conduct of appellant complained of were and are violative of the provisions of Sections 213 and 214 of the State Constitution, and otherwise unlawful, arbitrary and discriminative against appellee and other persons doing business with it; that the injury thereby inflicted was and is of a continuing and irreparable character, not susceptible of actual pecuniary estimation; that resort to actions at law will involve a multiplicity of suits which would not end the litigation, and that the only available or adequate remedy is that which may be afforded in equity and by injunction.

The answer as amended interposes the following matters of defense:

1. That appellee can not maintain the action, though the shipper if injured by the acts complained of in the petition, may do so.

2. That compliance on appellant's part with the requirements of Sections 213 and 214 of the Constitution would not only put it to great inconvenience, and delay its traffic, but the switching to be performed would entail unreasonable and extraordinary expense.

3. That having established the Bourbon Stock Yards, with its facilities for the handling, feeding and caring for all live stock shipped to Louisville, it is not required to establish or help to maintain any other live stock depot in Louisville.

4. That to compel it to recognize the right of owners, consignors and consignees to change destination *in transitu* would be an interference with, or regulation of, interstate commerce, and therefore violative of the Federal Constitution and Interstate Commerce Act.

5. That its charter forbids any other company, or any person, to use its road, and makes it unlawful for them to do so, and that in accepting the charter it entered into a contract with the State, which contract is violated by the provisions of Sections 213 and 214 of the Constitution.

6. That to compel it to perform switching duties in conformity with Sections 213 and 214, State Constitution, and the injunction granted by the court, would be to exact of it performance, at less than the cost thereof, of switching duties which can only be required of a transfer company, and this will amount to the taking of its property without due process of law, contrary to the provisions of the Constitution, particularly the Fourteenth Amendment thereof.

7. That to compel it to perform switching duties as required by the provisions of the State Constitution, *supra,* would necessitate its parting with the possession and control of its cars to another and competing company, and in effect thereby deprive it of its property without due process of law.

No reason is perceived for sustaining appellant's contention that this action can not be maintained by appellee. It will not do to say, as argued by counsel, that only shippers of live stock, or commission merchants, injured by the conduct of appellant complained of, may maintain an action against it.

If the alleged arbitrary and discriminatory acts of appellant set forth in the petition have injured appellee's business in the manner and to the extent therein averred, and such acts were violative of the provisions of the State Constitution, it goes without saying that it may maintain an action against the wrongdoer, without regard to any injury that may have resulted to any of its patrons from the same acts, or to their right to sue therefor. Moreover, if the alleged wrongful acts of appellant were of daily recurrence, and their continuance would cause further and irreparable injury to appellee's business, as charged, it made no mistake in applying through a court of equity for the writ of injunction to prevent the wrongs complained of, and at the same time to compel appellant as a common carrier to perform the duties it owes appellee, and its patrons, under and by virtue of the provisions of the Constitution.

Obviously, a separate action for the damages occasioned by each wrong would involve appellee, and appellant as well, in a multiplicity of suits, none of which would necessarily end the litigation. Besides, the injury to appellee's business being of a continuing character, it is not susceptible of accurate pecuniary estimation. For these reasons, appellee, in bringing this action, availed itself of the only means of obtaining adequate relief.

A court of equity will not interfere by injunction where there is an adequate legal remedy, but where there is no adequate legal remedy, and the ends of justice require it, it will do so to prevent irreparable injury. And by the express provisions of the Civil Code (Sections 271-276) the injunction may be preventive, or, if necessary, it may be mandatory—that is, affirmatively direct the party enjoined to do the thing or act necessary or proper to be done. Mason, etc., v. Byrley, 26 R. 487; Interstate Stock Yards Company v. R. R. Cos., 99 Fed. Rep. 483; L. & N. R. R. Co. v. P. & K. Coal Co., 111 Ky. 960; Bedford-Bowling Green Stone Co., etc., v. Oman, etc., 115 Ky. 369.

In view of the averments of the petition, we conclude that the interest of appellee as consignee and the party injured by the discrimination complained of is sufficient to entitle it to maintain the action.

Appellee bases its right to the relief asked in this case upon Sections 213 and 214 of the State Constitution which read as follows:

> SECTION 213. "All railroads, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."
>
> SECTION 214. "No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier."

Appellant's several contentions, and the claim of appellee to relief under these sections, require careful consideration of their provisions.

We find that much of the evidence offered by appellant in support of its second contention is directed to

showing that the cost of switching from 7th and Magnolia streets in the city of Louisville to the Bourbon Stock Yards, its live stock depot, is greater per car than the rate charged, for which reason, it insists, it can not rightfully be subjected to the expense and inconvenience of doing the switching required by Section 213, *supra*.

It appears from the evidence that appellant, prior to the erection of appellee's plant, in regulating its switching charges as to connecting carriers, had fixed the same at $3 per car, from all points of physical connection between such other carrier and its own road to the Bourbon Stock Yards. Later, the charge was reduced to $2 per car, and after the erection of appellee's yards, to $1 per car.

It also appears that the switching here referred to is done from what are known as the "break-up" yards of the railroad, each railroad entering Louisville having its break-up yards at a terminal point. Here the road engine by which a freight train of numerous cars is brought in, is uncoupled from the train and the train is "broken up" or separated with switch engines, which are used to carry the cars to some connecting line, industry, or other place to which they are consigned within the switching limits of the terminal point.

It further appears that appellant has its "break-up" yards in South Louisville, one and a half miles distant from 7th and Magnolia streets, at which point there is physical connection between the tracks of appellant and those of the Southern Railway Company where many cars are daily interchanged by the two systems for further transportation, or for delivery to different industries within the terminal switching limits of one or the other of the roads.

In ruling upon the second contention of appellant the chancellor held that this was purely a switching case under Section 213 of the Constitution, which imperatively requires all common carriers to make freight deliveries

at Louisville and other terminal points, to one and all alike without discrimination. Therefore, the question of whether such service could be conveniently performed by appellant, or that of regulating or fixing its switching charges, was not involved, though, as to the latter, it was further held that inasmuch as appellant had voluntarily fixed the charge for such service, it could not reasonably complain that it was not remunerative.

We are now to determine whether these conclusions of the lower court are correct. What is the object of Sections 213 and 214 of the Constitution? Judging from what was said upon this question in the debates of the Constitutional Convention (Vol. 4, pages 5118 to 5162, inclusive), it is manifest that these sections were specifically designed to cover just such a state of case as is here presented. This we think apparent from the references made in debate by members of the convention to previous refusals of appellant railroad company to receive, bill, transfer, or to deliver live stock to the Kentucky & Indiana Stock Yards Company, an industry similar to that of appellee, which was then located on the Kentucky & Indiana Company's tracks in the city of Louisville. In the progress of the debate it seemed to be conceded that under common law principles, or Section 3 of the Interstate Commerce Act, some of the Federal courts had held that a railroad company had the right to make exclusive contracts for live stock deliveries, as claimed by appellant; but the fact that it had been so held was urged as a reason why the convention should adopt Sections 213 and 214, and thereby put into the Constitution in express terms such a provision as would prevent common carriers from discriminating against any consignee at a terminal point.

The last clause of Section 213, though taken from the Interstate Commerce Act, differs from it in one essential particular. The third section of the Interstate Commerce Act concludes with this language:

"But this shall not be construed as requiring any such common carrier to give the use of its tracks or *terminal facilities* to another carrier in like business."

The last clause of Section 213, State Constitution, is as follows:

"But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business."

It will at once be discovered that the words "or terminal facilities," appearing in the Act, are omitted from Section 213 of the Constitution. This omission, as the proceedings of the convention indicate, was designedly made, and the section as a whole intended to make imperative the duties therein required of common carriers, regardless of the previous decisions of the courts. That is to say, in adopting the section, *supra*, it was the manifest purpose of the framers of the present Constitution to make it compulsory upon every common carrier to use its terminal facilities in receiving, delivering, interchanging, transferring and transporting freight in car loads, or less quantities, at points of physical connection for all alike when so requested.

If the State has the power to impose reasonable regulations for the government of railroads and other common carriers doing business within its borders, and one of the reasonable requirements of its organic law as to the former is that they shall use their terminal facilities for the benefit of the public to transport, transfer, switch and deliver freight to all alike, it necessarily follows that if they wrongfully refuse to perform these duties, they may, upon a proper showing of their recalcitrancy, be compelled by the courts to do so.

As said by this court in Commonwealth v. L. & N. R. R. Co., 26 R. 597:

> "Railroads are creatures of the law, invested with certain powers to promote the public interest, for which reason they may be required to conduct their affairs in furtherance of the public objects of their creation, and it is because of this public character that courts assume jurisdiction to enforce the public duties required of them."

The following more elaborate statement of the same doctrine will be found in Gladson v. State of Minnesota, 166 U. S. 435, which is quoted with approval in the opinion of the case *supra:*

> "A railroad corporation created by a State is for all purposes of local self-government a domestic concern, even when its road connects, as most railroads do, with railroads in other States, and the State which created the corporation may make all needful regulations of a police character for the government of the corporation while operating its road in that jurisdiction. It may prescribe the location of the place of construction of the road, the rate of speed at which trains shall run, and the places at which they shall stop, and make any other reasonable regulation for their management, in order to secure the objects of the corporation, and the safety, good order, convenience and comfort of the passengers, and of the public. All such regulations are strictly within the police power of the State." * * * (Lake S. & M. S. R'y Co. v. Ohio, 173 U. S. 285.)

Appellant's refusal to obey the mandatory provisions of the Constitution contained in Section 213 can not be excused upon the ground that to observe them would subject it to inconvenience or increased expense.

In Commonwealth v. L. & N. R. R. Co., *supra,* the railroad commissioners were sustained by this court in a ruling requiring the railroad company to so operate its trains as to accommodate local travel between Shelbyville and Christiansburg. It was contended by the company that

obedience to the order of the railroad commissioners would compel it to violate a contract it had made with the Chesapeake & Ohio Railroad, whereby it had leased to that company for a term of years the exclusive control and occupancy of its road between the points named for the use of its through passenger trains only, and, further, that if itself compelled to operate trains on that part of its road, it would be subjected thereby to great pecuniary loss. In response to these contentions, and in concluding its reasons for rejecting them, the court, in part, said:

> "But in any event appellee can not be permitted to escape the performance of any duty or obligation imposed by its charter or the general laws of the State by transferring its road, or any part thereof, to a lessee, or upon the ground that its own operation thereof will occasion loss to it."

In C. & N. W. R. R. Co. v. The People, 56 Ill. 376, the railroad company attempted to excuse its refusal to make a delivery of grain at the plaintiff's elevator upon the ground of additional expense. In considering this defense, the Supreme Court of Illinois said:

> "* * * The only allegations made in the return for the purpose of showing any difficulty in delivering to relator's elevator the grain consigned thereto, from the Wisconsin and Milwaukee divisions, is that these divisions connect with the line on West Water Street only by a single track, and that respondent can not deliver bulk grain or other freight to the elevator of relator, even from those divisions, without large additional expense, caused by the loss of the use of motive power, labor of servants and loss of the use of cars, while the same are being delivered and unloaded at said elevator and brought back. As a reason for non-delivery on the ground of difficulty, this is simply frivolous."

It is not insisted by appellee that appellant should deliver at its stock yard live stock carried to Louisville

on its lines and consigned to appellee by the shippers, but only that it be required to deliver cars containing such stock at points of physical connection between its tracks and those of the Southern Railway Company in or near Louisville, in order that the latter company may deliver them to appellee at its stock yards which are approached and surrounded by its tracks and switches.

Consideration of appellant's third contention is unnecessary. It may be conceded that having established the Bourbon Stock Yards as a place for receiving and caring for live stock, it can not be required to furnish more than one live stock depot in the city of Louisville, but we do not think that question is involved in this case, for appellee does not rest its claim to relief on any right conferred by the common law, but upon the mandatory provisions of the Constitution, which leads us to consider whether this case belongs to the class designated "Stock Yard Cases proper" in the written opinion of the chancellor, or to the other class referred to therein as cases "involving interchange of cars at physical connection of railways." The rule he deduces from the authorities as to the first class is:

> "That where the carrier furnishes its own stock yards, either by building them itself, or adopting the yards of another, it can not be compelled under the common law, or the Interstate Commerce Act, to furnish any other stock yard, or appliances therefor, for loading or unloading live stock at any other point in the city upon its own lines than at its own yards."

As to the second class, or cases involving interchange of cars at points of physical connection between railroads, the opinion of the chancellor states the rule thus:

> "Where ample facilities for loading and unloading are furnished by another line, and yards are there erected on the other carrier's track so that

the carrier may deliver stock with equal safety at said yards, then such delivery may be required, certainly under our Constitution, if not at common law. If this latter proposition is put in doubt by some conflict of authority, under the common law, it is certain that wherever there is a statutory or constitutional enactment looking to a prohibition of any discrimination in regard to the delivering, handling, care, and custody of freight, there can be no such discrimination, and similar treatment may be demanded by all in the same business."

We think the rule last stated applicable to the case at bar, though counsel for appellant contend that it is not, and cite the following authorities, which, it is insisted, support their view: Central Stock Yards Co. v. L. & N. R. R. Co., 192 U. S. 568; Covington Stock Yards Co. v. Keith, 139 U. S. 128; Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., 67 Fed. Rep. 35.

These, as we will presently endeavor to show, were purely stock yard cases, decided upon supposed common law principles, without respect to Section 213, State Constitution, for which reason we do not accept them as authority in point.

It is, however, earnestly argued by counsel for appellant that the case of Central Stock Yards Co. v. L. & N. R. R. Co., *supra*, is an adjudication directly in point, but this claim does not appear to be conclusive, as the following excerpts from the opinion of the Supreme Court in that case will show:

"We also lay on one side the question, whether the section of the Constitution of Kentucky is or is not, invalid, as an attempt to regulate commerce among the States. For we are of opinion that the defendant's conduct is not within the prohibition or requirement of either the act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed. * * * We have discussed the case as if the two stock yards were side by side. They were not, but they were both points of delivery

for cattle, having Louisville for their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which a carriage to another station in the same city by another road fairly might be regarded as a *bona fide* further transportation over a connecting road, and within the requirements of the Kentucky Constitution. However that may be, we are of opinion that the court below was entirely right, so far as it appears, in treating this as an ordinary case, of stations at substantially the same point of delivery, and therefore as one to be dealt with as if they were side by side."

It is patent the Supreme Court expressly declined to apply either the Constitution of Kentucky or the Interstate Commerce Act to the case before it, and in so holding incidentally declared the defendant's conduct was not within the prohibition or requirements of either the State Constitution or the Act of Congress, though admitting in a subsequent paragraph of the opinion that a case might arise in which carriage to another station in the same city by another road, might be regarded as a *bona fide* further transportation over a connecting road, and within the requirements of the Kentucky Constitution.

We do not think the opinion *supra* is to be understood as limiting the duty of a common carrier under Section 213, to that of only receiving cars of other roads coming to such common carrier, for the court did not construe or apply the section, and we will not presume that it intended an interpretation not justified by the language of the section. The wording of the section with respect to all common carriers is that they "shall so receive, deliver, transfer and transport all freight as above set forth from and to any point where there is physical connection with the tracks of said companies." Nor do we think the language, "shall receive, transfer, deliver and switch, empty or loaded cars," appearing in this section, means that a common carrier shall be required to transfer and

deliver to other carriers only such cars as it may receive of such other carriers. Such a narrow construction would allow each railroad company to say that it would not part with its own cars; consequently, there would be no cars to receive.

The cases of Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., 67 Fed. Rep. 36, and Covington Stock Yards Co. v. Keith, 139 U. S. 128, relied on in this connection by appellant's counsel, throw little light upon the questions here involved. The first was, as stated in the opinion, an action * * * "to compel it (the L. & N. R. R. Co.) to build a spur track connecting with complainant's yards," consequently it presents no question involved in the case at bar. The other only holds that a carrier having established its own stock yards, cannot be required under the common law to furnish another for loading or unloading stock at any other point in the city. In point of fact, it differs from the case at bar in this, Keith was the proprietor of stock yards in the city of Covington, "provided with all the necessary means of receiving, feeding and caring for such stock as he purchased, or as might be consigned to him by others for sale." His business, therefore, was that of "buying and selling on commission, as well as on his own account, live stock, brought to and shipped from Covington over the Kentucky Central Railroad." He was maintaining his own private stock yards for his own use. Whereas, in the case at bar, appellee maintains public yards; its position with reference to its patrons and the public being that of a public warehouseman, ready to serve all alike, and care for all the stock that may come. Appellee does not buy and sell stock, but only yards and cares for it. Appellant may, under ordinary circumstances, have the right to compel a private individual to accept a delivery of live stock at its own yards, but we do not think it has the right to enter into a preferential contract with one public stock yards which obligates it to make of such stock yards a monop-

oly, and by that means destroy or cripple another public stock yards equally well equipped for handling and caring for live stock, and having an equal right to require the delivery of live stock by appellant to it.

It is also contended for appellant that this court in L. & N. R. R. Co. v. Com., 108 Ky. 628, construed the constitutional provision involved in this case as in harmony with Butchers and Drovers Stock Yards Co. v. L. & N. R. R. Co., and Covington Stock Yards Co. v. Keith, *supra*. We think counsel err in this conclusion, for in L. & N. R. R. Co. v. Com., the controversy was as to rate discrimination, which necessitated a construction of Section 215 of the Constitution, in connection with Section 214, and others of the same instrument, the former being the section under which the railroad company was indicted. The point decided in that case was that the rigid inhibition as to preferential exclusive contracts contained in Section 214 was modified by the qualifying phrase, "upon the same conditions", found in Section 215. No such question is here involved.

We think the further contention of appellant that the Bourbon Stock Yards and those of appellee should be treated as if they were side by side untenable, because, as a matter of fact, they are not side by side. The proof shows by actual measurement that the distance from the Bourbon Stock Yards to that of appellee by the route over which live stock must pass is about eight miles, or, to be more specific, the distance from appellee's yards to 7th and Magnolia streets is two and one-tenth miles; from the latter point to South Louisville is one and seventy-one one-hundredths miles; from South Louisville to the switch at East Louisville, from which point stock is carried to the Bourbon Stock Yards, is three and ninety-four one-hundredths miles, and from the switch at South Louisville to the railroad pens of the Bourbon Stock Yards, the distance is from eight hundred to nine hundred feet. The addition of these distances will make the full

distance between the two stock yards about eight miles. We think, therefore, that it would not do violence to the rights of the parties litigant to assume that these yards are not side by side, and should not, in our opinion, be so regarded. Moreover, it would not seem unreasonable to say that the moving of freight within the territory of a populous city like Louisville, proximately, if not actually, a distance of eight miles, is further transportation, even in the meaning of the statement quoted above from the opinion of the Supreme Court in Central Stock Yards Co. v. L. & N. R. R. Co., *supra*. At any rate, it should be so regarded, unless we are to conclude that further transportation can only mean transportation to another city, or some point of delivery other than that to which the freight is consigned, which we are not prepared to concede.

In our opinion, not only had the Constitutional Convention the power to impose regulations upon all railroads within the State, requiring interchange of cars and switching at points of physical connection, in receiving and delivering freight, and the use of their terminals for such service, as manifestly contemplated by Section 213, but under the general police power of the State performance of such duties may be compelled by legislative enactment alone.

This doctrine is recognized in L. & N. R. R. Co. v. Pittsburg & Kanawha Coal Co., 111 Ky. 960, wherein it is said:

> "As incidental to the operation of a railroad it has the power to interchange cars with a connecting carrier, and such is the ordinary and usual way of doing business between common carriers, and the overwhelming weight of authority is to the effect that common carriers may by constitutional requirement, or legislative enactment, be compelled to interchange cars, the one with the other, for delivery on the line of the one or the other to the named consignee."

In L. & N. R. R. Co. v. Williams, 95 Ky. 199, it was held that although Section 213 of the Constitution required railroad companies to receive by transportation cars belonging to other companies, still, if such cars are so constructed as to render it unsafe to handle them in the ordinary mode, it is the duty of the company to refuse to receive them. Conversely expressed, the necessary meaning of the above judicial conclusion is that if a car offered to the connecting carrier is not unsafe, the latter is by the provision of the section, *supra*, compelled to receive it.

In Burlington, C. R. & N. R. R. Co. v. Dey, 82 Iowa, 336 (12 L. R. A. 436), the Supreme Court of that State, in upholding the constitutionality of a statute, containing provisions similar to those of Section 213, Kentucky Constitution, said:

> "The fact that the transfer of cars of one company to another for the transportation of property over more than one railroad without breaking bulk, has been practiced so long as to be recognized as of the usual course of business, of which we will take judicial notice (Peoria & P. U. R'y Co. v. Chicago, R. I. & P. R. Co., 109 Ill. 139), is a complete answer to the complaints made in the objection under consideration. Surely a course of business so long pursued, and so extensively prevailing and demanded by the commerce of the county, cannot when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional.
>
> "The railroad company as a common carrier is required to receive and transport freight offered it for transportation. The reasons upon which this rule is founded imposes upon it the obligation to have cars of other companies brought to it for transportation over its own road. As the course of business of the railroad companies and the rules of law require them to transport the cars of other companies, surely a statute prescribing and enforcing

the duty thus imposed cannot be regarded as interfering with the constitutional guaranties for the protection of the rights and property of such companies. Railroad corporations are *quasi* public corporations, dedicated to the public use. In accepting their charters they necessarily accept them with all the duties and liabilities imposed upon them by law. Thus a *quasi* public trust is created, which clothes the public with an interest in the use of railroads, which can be controlled by the public to the extent of the interest conferred therein."

In Jacobson v. Wisconsin, Minn. & P. R. R. Co., 71 Minn. 532 (40 L. R. A. 392), the Supreme Court of Minnesota, having under consideration a statute substantially like Section 213 of our Constitution, said of its constitutionality:

"We are clearly of the opinion that the Legislature has the power to compel a common carrier to do business in the ordinary and usual way, and therefore may compel such interchange of cars as incidental to the business for which the company was chartered."

In Michigan C. R. R. Co. v. Smithson, 45 Mich. 221, Judge Cooley said, of a like statute:

"The necessities of commerce required this with such imperative force that there could scarcely be a more flagrant breach of corporate duty than would be a refusal to obey this law; and the interference of the State to punish could hardly fail to be speedy and effectual."

In McCoy v. C., I. & St. L. & C. R. R. Co., 13 Fed. Rep. 3, we find this statement of the same doctrine:

"A railroad company can not bind itself to deliver to a particular stock yard all live stock coming over its line to a certain point, but it is bound to transport over its road and deliver at such points

reached by its tracks or connections, all live stock consigned, or which the shipper desires to consign, to them, upon the same terms, and in the same manner, as, under like conditions, it transports and delivers to their competitors; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yards discriminated against."

In Coe v. L. & N. R. R. Co., 3 Fed. Rep. 778, it is said:

"The facts suggest that very important inquiry, how far railroads called into being to subserve the public, can be lawfully manipulated by those who control them to advance incidentally their own private interests, or depress the business of particular individuals or localities for the benefit of other persons or communities. As common carriers they are by law bound to receive, transport and deliver freight offered for that purpose in accordance with the usual course of business. The delivery when practicable must be to the consignee."

In Peoria & P. U. R. R. Co. v. C. R. I. & P. R. Co., 109 Ill. 135, the doctrine is also recognized in the following words of approval:

"It is a matter of so much public concern that judicial notice may be taken of the fact, that cars belonging to different companies are interchangeably used on all the railroads in the United States, and that no company could do any considerable freighting business that did not conform to this general usage. Without such usage, it would be difficult, if, indeed, it would be possible, to transact the commercial business of the country."

An examination of the following additional authorities will show that they are in accord with those from which we have so liberally quoted: Interstate Stock Yards Co. v. R. R. Cos., 99 Fed. Rep. 472; L. & E. & St. L. Consol. R'y Co. v. Wilson, 18 L. R. A. 105; R. R. Co. v.

Goodridge, 149 U. S., 680; Inman v. St. L. S. W. R'y Co., 37 S. W. 37; B. C. & N. R. Co. v. Dey, 82 Iowa, 443; Atchison, T. & S. F. R. R. Co. v. Denver & N. O. R. Co., 110 U. S. 667; State v. Wabash, St. L. & P. R. Co., 83 Mo. 144.

In view of the foregoing authorities, we think it free from doubt that a common carrier may be required to make transfer of freight to the connecting carrier without breaking bulk, and that such is the customary way of transferring live stock from the initial carrier to the connecting carrier, is abundantly shown by the evidence appearing in the record.

This custom among common carriers is not only reasonable, and, as applied to the transportation of live stock, manifestly humane, but it is indispensably necessary to the demands of commerce.

Live stock and what is called perishable freight, damage quickly from travel, rehandling and delay, and this well known fact gave birth, doubtless, to the custom of transferring such freight by interchange of cars where it is transported over more than one road, delivery being made by the first carrier at the end of its line to the connecting carrier. But leaving out of view any question of appellant's duty under the common law, we have certain plain, unambiguous provisions of the State Constitution requiring of it the delivery, through another carrier at Louisville, with whose road it has physical connection, live stock consigned to appellee, and if it be conceded that the Constitution is indefinite or even silent as to the precise manner in which such delivery shall be made, we find that as a matter of custom the usual and proper way to make such delivery is by the interchange of cars, and that this custom is observed by appellant with respect to other railroads, except in the matter of delivering through the Southern Railway to appellee live stock consigned to it over appellant's lines of road. In other words, where live stock is consigned to appellee over appellant's

road, it arbitrarily refuses to deliver it, except at the Bourbon Stock Yards where it is unloaded from the cars, and to be taken from that point to appellee's yards, it must be reloaded on the cars and carried a distance of about eight miles, or driven on foot through the streets of Louisville, a distance of four miles, either reloading or driving them through the city would cause injury to the stock by shrinkage and consequent loss to the shipper. This, it seems to us, is a wrong both to appellee and its patrons and if persisted in by appellant would destroy appellee's business.

The duty imposed by the provisions of the Constitution upon appellant to make delivery of live stock as demanded by appellee, is not, in our opinion, affected by the fact that its performance will involve on appellant's part, or that of the connecting carrier, what are technically known as switching movements, for as said in Missouri Pacific R'y Co. v. Wichita Wholesale Grocery Company, 40 Pacific 899,

> "The distance over which freight is hauled, whether in car loads or less quantities, whether in its own cars, or that belonging to connecting carriers, can make no difference with the capacity in which the company acts. A railroad transporting a passenger or car load of freight one mile, using a switch engine for motive power, is just as much a common carrier as if the distance were a thousand miles by regular freight or passenger train."

Manifestly it is the duty of appellant as a common carrier to accept and carry all freight tendered it, and to make delivery thereof to the consignee, if the point of destination is on its lines, but if destined to a point not on its lines, it must nevertheless accept and carry such freight to the end of its lines and there deliver it to the connecting carrier with the instructions of the shipper.

In Elliott on Railroads the common law duty of a common carrier is thus stated: "As a general rule no

carrier is bound by law to accept and carry goods beyond the terminus of its own line. In the absence of any agreement, either express or clearly implied for transportation beyond its own line, the common law duty of an independent carrier is performed by safely transporting the goods over its own line and delivering them to the consignee or connecting carrier, as the case may be. In such a case the goods are to be delivered by the initial carrier to the connecting carrier for further transportation; the former is considered as a forwarding agent rather than a carrier, as to such further transportation, and is not liable for the default of subsequent carriers. Its whole duty is not always performed, however, by merely tendering the goods to the connecting carrier. If the latter refuses to receive them, it is generally the duty of the initial carrier to notify the consignor or the consignee without unreasonable delay, and to store or otherwise take care of the goods for a reasonable time while awaiting instructions. * * * So where instructions are to be given to it with the goods to be transmitted to succeeding carriers, it is the duty of such initial carrier to duly transmit them to the connecting carrier." Elliott on Railroads, Vol. 4, Sec. 1432.

"It is in general the duty of the initial carrier to obey the instructions of the shipper as to the route, mode of carriage and the like, and it should also transmit the instructions of the shipper to the connecting carrier." Elliott on Railroads, Vol. 4, Sec. 1440.

P. R. R. Co. v. Jones, 155 U. S. 333; Daner v. N. Y., etc., R. R. Co., 50 Howard, 428; Little Miami R. R. Co. v Washburn, 22 Ohio, 330; Parker v. C. S. B. Q. R. R. Co., etc., 56 Conn. 137; Bosworth v. Chicago R'y Co., 37 Fed. Rep. 72; R. R. Co. v. Mfg. Co., 16 Wallace, 318; Vincent v. C. & A. R. R. Co., 49 Ill. 41; Coe v. L. & N. R. R. Co., 3 Fed. Rep. 778; In Re Patterson, Fed. Rep. 3, 89; North v. Transportation Co., 146 Mass. 315; M., S. & I. R. R. Co. v. Day, 20 Ill. 375; Beers v. Wabash St. L. & P. R.

R. Co., 34 Fed. Rep. 244; L. & N. R. R. Co. v. Odell, 33 S. W. 611; McCoy v. C. & I. St. L. & C., 13 Fed. Rep. 3.

The right of the shipper to have his goods delivered to a connecting line is involved in the right to consign them as he chooses, and while he cannot require the initial carrier, at common law to assume any obligation beyond its own lines he can compel it to carry to the end of his line and deliver, according to the usual course. And we also think that a common carrier is as much bound to carry for another common carrier as it is to carry for other persons. Seasongood, etc., Co. v. Tenn. & Ohio River Transportation Co., 21 Ky. L. R. 1144.

Appellant can not justify the acts complained of upon the ground that they were required by its contract with the Bourbon Stock Yards, which would have been violated had it complied with the appellee's demands as to the delivery of live stock to it. The contract in question was entered into by the parties prior to the assembling of the Constitutional Convention. It provides in specific terms for the establishment and proper maintenance of the Bourbon Stock Yards as alleged in the answer, and the Fourth Clause thereof reads as follows:

> "First party agrees that it will not lease, rent or sell any of its ground, in the city of Louisville, for the establishment of a stock yard, or otherwise facilitate the establishment of a stock yard in said city, and it will establish no other stock depot in said city, and that it will deliver and cause to be delivered to the second party, so far as it legally may, all live stock shipped over the roads of the first part and consigned to the city of Louisville, and should any live stock be shipped to other person or persons of the said city the first part hereby makes and agrees to make the stock yards of the second party the stock depot of the second party for said city and agrees to unload all live stock shipped to said city at the address of the second party, but if the provisions of this section of the contract be abrogated or invalidated by judgment of any court or by legislative

requirement, then the second party shall have no claim to damages arising out of or dependent on said provisions, and the second party shall, at its own costs and expense, defend any and all litigation which may arise out of the provisions of this section, and will hold the first party entirely harmless therefrom."

Three things are apparent from the language of this clause of the contract, viz: That the parties at the time of its execution were themselves in doubt as to its validity; that appellant can sustain no loss, either by way of cost incurred in litigation arising from it, or in the matter of damages to be paid the Bourbon Stock Yards in the event the contract should be abrogated by the judgment of a court or by legislative requirement, and finally that the parties had in contemplation some early change in the laws of the State, organic or statutory, that might require the abrogation of this contract.

That this is an exclusive and preferential contract such as is expressly forbidden by Section 214 of the State Constitution, there can be no doubt, and likewise such as the courts everywhere have denounced as against public policy, because promotive of monopoly and hurtful to the public, as well as the person or persons sustaining special injury therefrom.

A similar contract was recently condemned by this court in the case of Bedford-Bowling Green Stone Co., etc., v. Oman, etc., 115 Ky. 369. One of the points of controversy was whether the Louisville and Nashville Railroad Company should be required to transport on its cars stone from appellee's quarry, which it had refused to do on the ground that by contract with the Bedford-Bowling Green Stone Co., a competitor of appellees and owner of a quarry, side by side with theirs, it had obligated itself to use the switch connecting both quarries with the main track three miles distant, only for the transportation of

stone from the Bedford-Bowling Green Stone Company's quarry, the latter company having purchased the switch with the quarry property from its grantor. In disposing of this contention of the railroad company the court, through Judge Barker, said:

> "This contract and other evidence in the record bearing upon the question show that the Louisville and Nashville Railroad Company, during the continuance of this last contract has the control and management of the railroad switch. It owns, controls and operates the engines and other rolling stock which pass over the line. It keeps the railroad in repair and owns all the material which goes into it. So far as this record shows it exercises the same control and dominion over this line that it does over any other part of its system, and we think, by the terms of the contract in question, the switch, during the continuance of the contract, at least, became a part of the general system of the Louisville and Nashville Railroad Company. This being so, it can not lawfully refuse to receive and transport freight belonging to appellee to and from such reasonable points along the line at which they may lawfully ship or receive it. This was clearly settled by the opinion of this court in the case of the Louisville and Nashville Railroad Company v. Pittsburgh and Kanawha Coal Co., 111 Ky. 960, in which it is said: 'Railroad companies are quasi public corporations, created for the purpose of exercising the functions and performing the duties of common carriers. These duties are defined by law, and in accepting their charters they necessarily take with them all the duties and liabilities annexed; and they are required to supply to the extent of their resources adequate facilities for the transportation of all business offered, and to deal fairly and impartially with their patrons. (McCoy v. C. & I. St. L. C. R. R. Co., 13 Fed. Rep. 5; Munn v. Ill., 94 U. S. 136.) And they have no right to contract with a corporation or individual to give exclusive rights to transfer any commodity over any part of their line." * * *

In L. & N. R. R. Co. v. Pittsburgh & Kanawha Coal Co., 111 Ky. 960, quoted with approval by the opinion in the case, *supra*, another such preferential contract was condemned in the following language:

> "In our opinion the contract with the Cannel Creek Coal Company, giving them exclusive use of the switch for coal purposes, was against public policy and absolutely void."

In other cases brought to this court, contracts of the character of that here assailed, have been declared absolutely void. Com. v. L. & N. R. R. Co., 27 R. 497; Anderson v. Jett, 89 Ky. 375. And looking to the decisions of the courts of last resort of other States with respect to such contracts, we find nearly all of them in harmony with our own, those here cited being strongly in point. Peoria & R. I. R. R. Co. v. C. V. M. Co., 68 Ill. 489; Munn v. Ill., 94 U. S. 126; McCoy v. R. R. Co., 13 Fed. Rep. 5; Inter Ocean Co. v. Associated press, 184 Ill. 448; Chicago & N. W. R. R. Co. v. People, 56 Ill. 365; Sanford v. R. R. Co., 24 Pa. 382; State v. Hartford & N. H. R. R. Co., 29 Conn. 538.

While a railroad company must be conceded the power to regulate transportation of passengers and freight on its own road, it cannot exercise it in such a manner as to unduly advantage certain individuals and exclude others, or to foster a particular industry by crippling another. It will not be allowed to so operate its road or conduct its business as to promote monopoly or stifle competition, for the one is necessarily hurtful to the public and therefore against public policy, while the other is the best protection to the public. A railroad company is, therefore, without power to enter into a preferential or exclusive contract with any of its patrons. If possessed of such power railroad companies might, as said by Judge Baxter in the Stock Yards case of L. & N. R. Co. v. Coe, *supra:*

"Destroy a refractory manufactory, exterminate, or very materially cripple competition, and in large measure monopolize and control the several branches of useful commerce, and dictate such terms as avarice may suggest. We think they possess no such power to kill and make alive. Impartiality in serving their patrons is an imperative obligation of all railroad companies, equality of accommodation in the use of railroads is a legal right of everybody. The principle is founded in justice and necessity, and has been uniformly recognized and enforced by the courts. A contrary idea would concede the railroad companies a dangerous discretion, and inevitably lead to intolerable abuses. It would, to a limited extent, make them masters instead of servants of the people. * * *"

It is apparent from the evidence appearing in the record in the case at bar, that appellant's compliance with the Bourbon Stock Yards' preferential contract, has given that company undue advantage over appellee and thereby injured the latter's business and if continued will cause it greater injury. It is equally apparent from the evidence, that the existing facilities of appellant to interchange traffic between its lines and those of the Southern Railway Co. when it reaches Louisville, leaves no difficulty in the way of the delivery to appellee of the live stock consigned to it over appellant's road. In response to appellant's 5th contention, it is only necessary to say that the switching and delivery of cars imposed upon it by Section 213, State Constitution, and the judgment appealed from, do not violate any contract between it and the State created by its charter, or require the use of its tracks by the Southern Railway Company.

Appellant is only required to switch its cars on to other tracks and to allow its cars to be thus used in the switching. The performance of such duties may, as held by the numerous authorities cited in the opinion, be required as incidental to the operation of the railroad. If

a railroad company can be required, as a part of its service due the public, to transport the cars of another company over its lines, it may also be required to switch its own cars upon the track of another and connecting road for purpose of delivery.

Appellant's charter provision, relied on as exempting it from the performance of the duties required by section 213, *supra*, is not such a contract as will excuse it.

No doctrine is better settled than that a railroad company takes its charter, holds its property and franchises, and operates its road subject to the conditions and limitations imposed by the State in its Constitution and general laws, and also subject to future constitutional provisions and future general legislation. As said by Mr. Justice Brown in Min. & St. L. R'y Co. v. Minn. R. R. & Warehouse Co., 186 U. S. 261, "It is impossible for the State to exercise this power of regulation without interfering to some extent with the power of the railroad company to contract with either its customers or connecting lines."

In Penn. R. R. Co. v. Miller, 132 U. S. 75, it was held that "Neither the original charter of the railroad company, nor subsequent acts conferring additional privileges constituted such a contract between the State and the company as exempted the latter from the operation of the subsequently adopted constitution of Pennsylvania; that a constitutional provision as applied to the company in respect to cases afterwards arising did not impair the obligation of any contract between it and the State; and that the company took its charter subject to the general law of the State and to such changes as might be made in such general law, and subject to future constitutional provisions and future general legislation, since there was no prior contract with it exempting it from such enactment." Lou. Water Co. v. Clark, 143 U. S. 1; L. & N. R. R. Co. v. Ky., 161 U. S. 677.

We are unable to find any merit in the sixth and seventh contentions of appellant, that to require of it performance of switching would put it to increased cost and necessitate its parting with the possession and control of its cars into the possession of another and rival company and thereby deprive it of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States. These contentions we have already in effect answered. Neither in principle or in fact will the switching and delivery of cars demanded of appellant deprive it of its property. The duties to be performed are incidental to the transportation of freight in bulk in the business of railroads and requires only a necessary and not unreasonable temporary use of appellant's cars by the Southern Railway in unloading stock at appellee's stock yards after its transportation over appellant's road has been completed.

That such switching is not an unreasonable or an unusual use of the cars of one company by another is made plain by the agreement appearing in the record whereby the railroads of the country, including appellant, have agreed upon a uniform charge for rental of their cars when used by other roads. It is not perceived that appellant can consistently demand to be relieved of the performance of switching duties required by the provisions of the State Constitution, in view of its having already agreed to perform these duties, and of its willingness to yet perform them, for all other railroads that do not require live stock to be switched to appellee's yards.

In the case of L. & N. R. R. Co. v. Commonwealth of Kentucky, 183 U. S. 513, we find the following pertinent statement of the law as to the property rights of a railroad company in its relations to the State:

> "It is said that while it is true that railroad companies receive their rights to exist and to maintain their roads from the State, yet their ownership of

such roads is property and as such is protected from arbitrary interference by the State. But though it be conceded that ownership in a railroad is property, it is property of a kind that is subject to the regulations prescribed by the State."

Appellant's cars, like its roadbed and track, are property held for public purposes. Private property may be taken for the construction of the railroad on the ground that it is taken for public purposes, and when the railroad is constructed, it holds its property for public purposes. It must serve the public and can not complain that its cars are used, even by another railroad company, if it is done in the usual course of the railroad business and for the benefit of a consignor or consignee entitled to the transportation or delivery of freight in bulk and contained in such cars. If this is in a sense the taking of its property for private purposes, appellant must, as a common carrier, submit to it, for it is only a temporary and necessary use of its property. Appellant can not suffer loss by such use of its cars. If it delivers its cars to the Southern Railway to be taken to appellee's stock yards for the loading or unloading of stock, that company has no right to detain them longer than a reasonable time for that purpose and must return them.

Appellant may charge a reasonable amount for the use of its cars, and if they are not returned, or if detained an unreasonable time, it may sue the delinquent road for damages, or apply to a court of equity for a mandatory injunction to compel the return of the cars. Indeed, it can suffer no loss which the law may not remedy.

By the regulation between railroads, cars are interchanged from one road to another at a fixed charge. In brief, appellant's contention comes in substance to this: that it has a right to discriminate and not allow all roads for all purposes to use its cars. This is the very evil that

the constitutional provision in question was intended to prevent.

Appellant's fourth contention, though laid aside until the others were disposed of, is not difficult of solution. Are the requirements that appellant shall recognize the right of owners, consignors and consignees to change destination *in transitu*, a regulation of interstate commerce and violative of the Federal Constitution, as claimed?

On this subject Hutchison on Common Carriers, Sec. 134, has this to say:

> "When there has been no agreement to ship the goods which will make the delivery of them to the carrier a delivery to the consignee and vest the property in him, the shipper may, even after the delivery to the carrier and after the bill of lading has been signed and delivered, or after the goods have passed from the possession of the initial carrier into that of a succeeding one, alter their destination and direct their delivery to another consignee, unless the bill of lading has been forwarded to the consignee first named, or to some one for his use. But after the carrier or his agent has given one bill of lading or receipt for the goods it can not give another, unless the first and all the duplicates have been returned to him."

Also in Section 337 it is said:

> "So long as the goods remain the property of the bailor, he may countermand any directions he may have given as to their consignment, and may at any time during the transit require of the carrier there redelivering to himself; and if such redelivery can be made without too much inconvenience, or expense to the carrier, he will be bound to make it. A carrier is employed as a bailee of a person's goods for the purpose of obeying his directions respecting them, and the owner is entitled to receive them back at any period of the journey where they can be got at. To say that a carrier is bound to deliver goods

according to the owner's first directions is a proposition wholly unsupported either by law or common sense. I can well understand the case of goods being placed in such a position that they can not easily be got at, though it is usually otherwise. But if the goods are demanded by the owner during the transit, when the carrier is willing and able to fulfill the contract on his part, the latter will be entitled to his full freight for the whole distance to the destination to which they were originally directed, and any expense he may be put to in unloading. If this be tendered and he refuse to restore the goods it will amount to a conversion. The owner can not, however, it is said, change the destination and require delivery somewhere else except upon the basis of a new contract, after the carrier has completed his undertaking and carried the goods to the destination first agreed upon." Sutherland v. Second Nat. Bank, 78 Ky. 250; L. & N. R. R. Co. v. Hartwell, 99 Ky. 436; Strahorn v. Union Stock Yards and Transit Co., 43 Ill. 424.

We do not understand it to be denied by counsel for appellant that the consignor may change the consignee; but it is denied that he can change the destination, and insisted that if the exercise of the right to change either requires of it the performance of the switching duties demanded by appellee under Section 213 of the Constitution, it will amount to a regulation of interstate commerce.

When a shipment is made from another State and reaches appellant's break-up yard in Louisville, the shipper has a right to demand there his stock. When he does make this demand the interstate shipment is ended, and if he there demands it he has a right, under the laws of this State, to have the stock delivered by appellant to another carrier with whose road it there has physical connection, to be shipped to another point in Louisville or within the State, upon reasonable charges. This shipment within the State is not interstate com-

merce. If in a shipment from Tennessee to Louisville, the shipper had stopped the car at Elizabethtown, no doubt would exist of his right to take the stock, and if he then shipped it to another point in the State, it would not be material that the first shipment was from Tennessee.

We are referred by the briefs of counsel to numerous authorities on this question, but we can take time to consider only such of them as we regard decisive thereof. One of the most pertinent of them is an excerpt from Mr. Justice Miller's discussion of the difference between State and interstate commerce: "It may be thus stated: That the power to regulate commerce is one which includes many subjects, various and quite unlike in their nature; that whenever subjects of this power are in their nature national, or require one uniform system or plan of regulation, they may be justly held to belong to that class over which Congress has the exclusive power of legislation; but that local and limited matters not national in their character which are most likely to be wisely provided for by such diverse rule as the localities and the authorities of the different States may deem applicable, may be regulated by the legislatures of those States in the absence of any act of Congress upon the same subject." (Lectures on the Const. page 454.)

It was said by Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat, 1-203:

> "It is obvious that the government of the Union, in the exercise of its express powers—that, for example, of regulating commerce with foreign nations and among the States—may use means that may also be employed by a State in the exercise of its acknowledged powers; that, for example, of regulating commerce within the States. * * * So if a State in passing laws on subjects acknowledged to be within its control and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its

authority from a particular power which has been granted to Congress, but from some other which remains with the State, and may be executed by the same means."

That there has been no departure by the Supreme Court from the above view of the question, is clearly shown by its later decisions, as, for example, it was said by Mr. Justice Field in Mobile County v. Kimball, 102 U. S. 702: "Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined and its local aids or instruments or measures taken for its improvement. Commerce with foreign counties and among the States, strictly considered, consists in intercourse and traffic, including in those terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce."

In L. & N. R. R. Co. v. Kentucky, 161 U. S. 677, which was an action brought by the State to prevent the consolidation of certain railroads, it was contended by the railroad company that Section 201, of the Kentucky Constitution, which forbids the purchase by a railroad of a competing line, is a regulation of interstate commerce, and for that reason void. In rejecting that contention the court, through Mr. Justice Brown, said:

"But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the States, in the fact that they impose a burden upon instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are, more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the Legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce which are treated as a direct burden. There are certain intimations in some of our opinions which might perhaps lead to an inference that the police power can not be exercised over a subject confined exclusively to Congress by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the instruments of commerce. * * * It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of commerce so far as the legislation was within its ordinary police powers. Nearly all the railways of the country have been constructed under State authority and it can not be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable.

"In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce, and to forbid interference therewith; while to the States re-

mains the power to create and regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

In L. & N. R. R. Co. v. Ky., 183 U. S. 503, it was contended by the railroad company that Section 218 of the State Constitution, forbidding a railroad's charging more for a short haul of freight than for a long one, was void because it interfered with interstate commerce. The court, Mr. Justice Shiras writing, unanimously declared:

> "It is plain that the provision in question does not in terms embrace the case of interstate traffic, it is restricted in its operation to those who own, or operate a railroad within the State, and the long and short distance mentioned are evidently distance upon the railroad line within the State. The particular case before us is one involving only the transportation of coal from one point in the State of Kentucky, to another by a corporation of that State. It may be that the enforcement of the State regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may somewhat affect commerce generally, but we have frequently held that such a result is too remote and indirect to be regarded as interference with interstate commerce; that the interference with the commercial power of the general government, to be unlawful, must be direct and not the mere incidental effort of enforcing the police powers of a State. (N. Y., L. E. & W. R. Co. v. Penn., 158 U. S. 431; Henderson Bridge Co. v. Ky., 166 U. S. 150.) A discussion of this subject will be found in the opinion of this court in L. & N. R. R. Co. v. Ky., 161 U. S. 701, where the same conclusion was reached."

The following additional authorities bearing upon the same question are in harmony with those *supra*, viz.: N. Y., N. H. & H. R. R. Co. v. N. Y., 165 U. S. 628; Hopkins v. U. S., 171 U. S. 578; L. S. & Mich. S. R'y Co. v. Ohio, 173 U. S. 285; Chicago, M. & S. P. R'y Co.

v. Becker, 32 Fed. Rep. 849; Iowa v. Chicago, M. & S. P. R'y Co., 53 Fed. Rep. 391. The two last being specific switching cases.

The conclusion deducible from the foregoing authorities is, that Section 213 of the Kentucky Constitution, requiring interchange and switching of cars, is a valid exercise of the police power of the State; that it is not intended to affect interstate commerce, and that such effect as it may have thereon is purely incidental and indirect, and this being true, it is not to be regarded as a regulation of interstate commerce within the meaning of the Federal Constitution or Interstate Commerce Act.

The Supreme Court long ago adopted the rule that it would accept the construction of a State constitutional provision or statute, adopted by the highest court of such State, provided they do not conflict with some provision of the Federal Constitution or Federal statutes. Green v. Neal, 6 Peters, 291; Fairfield v. Gallatin, 100 U. S. 47; Post v. Supervisors, 105 U. S. 667; Leeper v. Texas, 139 U. S. 462; In Re Duncan, 139 U. S. 499.

As we understand the decisions of the Supreme Court, it will in a case like the one at bar apply the same test applied by the State courts, which is, whether or not the constitutional provision or statutory provision, as the case may be, can be enforced within the particular State without affecting the railroad company with respect to the performance of its duties in other States. W. U. Tel. Co. v. James, 162 U. S. 650; Lake S. & M. S. R'y Co. v. Ohio, 173 U. S. 309. Applying that test to the constitutional provisions under consideration, it is, we think, manifest that they do not regulate appellant's duties in any other State, but only such as are purely local and to be performed within this State. In other words, these provisions are directed to the instrumentality and not against the commerce itself. It is a mere exercise of that power of which Mr. Cooley says, "It can not be doubted that there is ample power in the legislative de-

partment of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and expedition." (Cooley's Const. Lim. (6 Ed.), page 715.)

The enactment of Sections 818, 819, Kentucky Statutes, the latter providing penalties for a violation of the provisions of the former was but a further exercise of this power of the State and designed to provide a means of compelling obedience to the mandatory provisions of the Constitution contained in the section, *supra*.

In our opinion the power of the State, by appropriate change in its organic law, or by legislative enactment, to provide for the public convenience, stands upon the same ground as its power by such legislation to protect the public morals or the public safety. We would not be understood as holding that if appellant were required to deliver to appellee at a point of physical connection with the road of the Southern Railway Company, in Louisville, cars passing through Kentucky from one State into another, or cars received from a point in Kentucky for further transportation by way of Louisville, into another State, it would not be an interference with interstate commerce or a regulation thereof. However, that question is not here presented for decision. It is only insisted that appellant be required to perform the duties of switching by a mere delivery, in the customary manner of live stock to the consignee, at the point of destination in obedience to the instructions of the owner or shipper, and such service, we think, it should be required to perform whether the live stock is shipped over its lines to Louisville from a point within the State or brought there from another State. For the courts to compel the delivery by a common carrier of live stock to the consignee at the point of destination, according to the custom obtaining among railroads and in obedience

to the demand of the consignor, whether the freight come from a point within or without the State, is not a regulation of interstate commerce. And if the delivery of freight can thus be compelled, the carrier may also be required to receive it for such delivery, at all stations on its lines in this State.

Judgment affirmed. Whole court sitting, Judge Barker dissenting.

W. M. Smith,
Dodd & Dodd,
For Appellee.

Helm, Bruce & Helm,
Charles N. Burch,
For Appellant.

APPENDIX, PART II.

Jefferson Circuit Court.

CHANCERY BRANCH, FIRST DIVISION.

CENTRAL STOCK YARDS COMPANY, - - - *Plaintiff*,

versus

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - *Defendant*.

OPINION.

This action, as now finally heard, is not materially different in its controlling points, from the case as it appeared when first tried upon affidavits and a motion for a temporary injunction. What then appeared by affidavits now appears by depositions in a somewhat amplified, but not a substantially different way. Upon the original hearing, a written opinion was filed covering the case as then presented. And in view of that fact, counsel, upon final argument, treated the questions of law therein passed upon as final in this court, and addressed their arguments to other questions. Since the case was submitted, however, the Supreme Court of the United States has (February 23, 1904) decided a case between the same parties and pending there upon appeal from a judgment of the United States Circuit Court in a suit brought under the Interstate Commerce Act of 1887 and subsequent to the institution of this action. By supplemental brief, it is urged for defendant that this decision of the United States Supreme Court is conclusive

of this case; not, however, in the sense that it is *res adjudicata*, but that it is an adjudication directly in point. It is clear, however, from an examination of the opinion that it does not have the force of a precedent directly in point, for the court expressly said that neither a construction of the Constitution of Kentucky nor of the Interstate Commerce Act was necessary in deciding the case, but that the case was decided upon law principles. The opinion says:

> "For the purposes of decision we assume without expressing an opinion that if the Act of Congress and the Kentucky Constitution apply to the case they both confer rights upon the plaintiff. As to the former, compare Sections 8, 9, and the Act of February 19, 1903, c. 708, Section 2, 32, Statutes 847, 848, Covington Stock Yards Co. v. Keith, 139 U. S. 128; Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. R., 37 Fed. Rep. 567, 610, 620. The rights under the latter, which are relied upon especially, could not be established without discussion. Compare Atkinson v. Newcastle Waterworks Co., 2 Ex. Div. 441; Johnston v. Consumers' Gas Company of Toronto (1898), A. C. 447. For the same purpose we further assume that such rights as the plaintiff has may be enforced by Bill in Equity. See Interstate Stock Yards Co. v. Indianapolis Union Railway, 99 Fed. Rep. 472. We also lay on one side the question whether the section of the Constitution of Kentucky is or is not invalid as an attempt to regulate commerce among the States. For we are of opinion that the defendant's conduct is not within the prohibitions or requirements of either the Act of Congress or the Constitution of Kentucky, as those provisions fairly should be construed.
>
> "We have discussed the case as if the two stock yards were side by side. They were not, but they were both points of delivery for cattle having Louisville as their general destination. They both were Louisville stations in effect. It may be that a case could be imagined in which carriage to another station in the same city by another road fairly might

be regarded as *bona fide* further transportation over a connecting road and within the requirements of the Kentucky Constitution. However that may be, we are of opinion that the court below was entirely right, so far as appears, in treating this as an ordinary case of stations at substantially the same point of delivery, and, therefore, as one to be dealt with as if they were side by side."

The case was treated as an ordinary "stock yard" case under the common law principles as announced in Covington Stock Yards v. Keith, 139 U. S. 128, and no attempt was made to apply either the Constitution of Kentucky or the Interstate Commerce Act, except to say that the case as there presented, did not necessarily come within the provisions of either law, and that the case was to be decided outside of both of them. In dealing with the two stock yards "as if they were side by side" the Supreme Court ignored the important fact, which is fully shown by the defendant, in this case at least, that the two stock yards are about four miles apart by an air line, and are fully five miles or more apart by rail, via 7th and Magnolia streets—the most direct route. The original opinion in this case pointed out that this was a "switching case" under Section 213 of the State Constitution, as distinguished from a "stock yard case" under common law principles and therefore construed the Constitution in applying it. In treating the case before it as a "stock yard case" the Supreme Court gave to the facts of this case an effect sufficient to differentiate it from this case upon its facts as found by this court.

And, although the facts of the two cases may have been substantially the same, the construction to be given by the Court of Appeals of Kentucky to the Constitution of Kentucky will be binding both upon this court and upon the United States Supreme Court in so far as its ordinary application to State affairs in concerned. (L.

& N. R. R. v. Commonwealth, 20 Ky. L. Rep. 1386; L. & N. R. R. v. Commonwealth, 21 Ky. L. Rep. 232, 106 Ky. 633; same case upon appeal in 183 U. S. 503.)

In the case last cited the United States Supreme Court unanimously held that the construction put by the Kentucky Court of Appeals upon Section 218 of the Kentucky Constitution by which a different effect is given to it than is given to similar language in the Interstate Commerce law, is binding upon the Supreme Court of the United States in a case governed by the State Constitution.

As stated in the original opinion, I am of opinion that this case is controlled by Section 213 of the State Constitution, which section has not been construed either by the Kentucky Court of Appeals or by the United States Supreme Court. Under this state of affairs, what should be the course of this court? Should it ignore the Constitution and treat it as inapplicable because the Supreme Court has done so in a similar case? Or should I treat the question as an open one, to be finally settled by our Court of Appeals? In L. & N. R. R. Co. v. Commonwealth, 104 Ky. 226, 241, 20 Ky. L. R. 1386, a similar case in principle, the Court of Appeals said:

> "Counsel have cited Texas Pacific R. v. Interstate Commerce Commission, 162 U. S. 197, and Interstate Commerce Commission v. Alabama Midland R. Co., recently decided by the Supreme Court of the United States, in which, construing Section 4 of the Interstate Commerce Act, substantially like Section 218, it was held that when difference of rates between two points of shipment is the ground of complaint competition is a leading element to be considered, though in each case the court was divided. The Interstate Commerce Act was intended to operate not within limits of a State merely, but between and through States. And whatever construction that high tribunal may put upon Section 4 of that Act, we, in exercise of the province belonging to the Su-

preme Court of each State to construe its own laws, have endeavored to so construe Section 218 as not to kill it."

In view of the contrary positions of the Kentucky Court of Appeals and the United States Supreme Court upon these features of the State Constitution it is only reasonable to assume that the Court of Appeals will adhere to its position; and as its ruling in this general question is binding both upon this court and the United States Supreme Court, I feel constrained to adhere to the original opinion in this case.

2. Considerable testimony has been taken tending to show that the actual cost of switching from 7th and Magnolia to the Central Stock Yards is $1.55 8/10 or more per car, while the switching rate or fee is only $1 per car. It is somewhat difficult, however, to appreciate the relevancy of this fact to the case. The switching charge was voluntarily reduced by the defendant—first from $3 to $2 per car, and subsequently from $2 to $1 per car, which is the present charge complained of. This case does not seek to either fix or regulate defendant's switching charges. Defendant interchanges freight at 7th and Magnolia with the Kentucky & Indiana Bridge Company; the Baltimore & Ohio Southwestern Railroad; the Chicago, Indianapolis & Louisville Railroad; and the Southern Railway; and at 7th and Ormsby ("Hub Track") it likewise interchanges with the Illinois Central Railroad and with the Louisville, Henderson & St. Louis Railway.

The defendant switches for all these roads at a uniform charge of $1 per car, and only objects to switching live stock to the Central Stock Yards, because and upon the ground that by so doing it is helping a rival to the Bourbon Stock Yards, which is the live stock depot of the defendant. But as the price or charge for the service is fixed by the defendant, it can not reasonably complain that it is not remunerative.

3. It is further claimed that to require defendant to switch cars for other roads or persons, requires it to perform a "transfer" business instead of a transportation business, and that such a requirement would compel defendant to turn over its cars and terminal facilities to the care of other persons, and that this amounts to a taking of defendant's property without due process of law.

In speaking of defendant's charter and its relation to the State, the United States Supreme Court uses this language in L. & N. R. R. Co. v. Commonwealth of Kentucky, 183 U. S. 513:

> "When the citizens of Kentucky voluntarily seek and obtain a grant from the State of a charter to build and maintain a public highway in the form of a railroad it would seem to be evident that it takes, holds, and operates its road subject to the constitutional inhibition we are considering, and are without power to challenge its validity. It may be that, in a given case, a railroad company may be able to show that the State had disabled itself from enforcing the provision by a contract previously made, and it may be that cases may arise in which the provision can not be enforced because operating as an unlawful interference with commerce between the States. Indeed, those very positions are taken by the plaintiff in error, in this case, and will receive our attention hereafter. But apart from such contentions and looking only at the case of a company voluntarily formed to carry on business wholly within a State, we are unable to see how such company can successfully contend that it can be exempted by the courts from the operation of the Constitution of the State.
>
> "It is said that while it is true that railroad companies receive their rights to exist and to maintain their roads from the State, yet that their ownership of such roads is property and, as such, is protected from arbitrary interference by the State. But, though it be conceded that ownership in a railroad

is property, it is property of a kind that is subject to the regulations prescribed by the State."

If the Constitution can properly require defendant to switch cars, it is immaterial as to what name the business may be called—whether it be a transportation or a transfer business. If the constitutional convention was acting within its powers, it is not for this court to criticise the wisdom or policy of the convention. If it had the power to require a railroad company to do a transfer business, the courts can not say that it ought not to have been done.

It will be noticed that Section 213, *supra*, includes transfer companies as well as railroad and other carrier companies. The switching contemplated does not require defendant to permit other roads to use its tracks, but it may require defendant to switch its cars upon other tracks and to thus be used in the switching. This, I think, may be done as incidental to the operation of a railroad, as was pointed out upon authorities cited in the original opinion. If a railroad can be compelled, as a part of its public service, to take the cars of another road over its line as was held in the Williams case (95 Ky. 199), it would certainly follow that it could be required to switch its own cars upon the track of another road for delivery purposes. One requirement would in principle be as much a taking of property as the other. Switching, as here claimed, is a mere incident to the transportation of goods and requires only a necessary, and not an unreasonable use of cars in the delivery of freight after its transportation has been practically completed. As was pertinently said by Mr. Justice Brown in the late case of Minneapolis & St. Louis Railway Company v. Minnesota Railroad & Warehouse Commission, 186 U. S. 261, "it is impossible for the State to exercise this power of regulation without interfering, to some extent, with the power of a railway to contract either with its customers or connecting lines."

It is elementary "that the company takes and holds its franchises and property subject to the conditions and limitations imposed by the State in its Constitution." Munn v. Illinois, 94 U. S. 113; Davidson v. New Orleans, 96 U. S. 97; Railroad Commission cases, 116 U. S. 307; L. & N. R. R. v. Kentucky, 183 U. S. 516. That compulsory switching is not an unreasonable or an unusual use of the cars of one company by another is made plain by the "per diem" agreement filed in this case whereby the railroads of the country, including the defendant, have agreed upon a uniform charge or rental for their cars when used by other roads. The switching clause of the Constitution, when enforced, only requires the defendant to do what it has already agreed to do, and is willing to do, and is voluntarily doing for all roads that do not require live stock to be switched to the plaintiff's yards. The switching service does not participate in the through freight rate of the carrier; and in delivering its cars to other roads for delivery purpose, the carrier road having received its entire freight to the point of delivery gets the switching service gratis. The switching road gets additional pay for the switching service. The authorities cited in the original opinion (Rec. pp. 75 to 86) abundantly sustain the proposition that the State may require this minor use of its rolling stock as a part of the conditions upon which the carrier holds its charter. I have mentioned the matter of the violation of switching charges and through freight rates, because it has appeared principally in the testimony which has been taken since the original opinion was filed.

4. As the immediate purpose of this action and the injunction issued herein related to the delivery of six specific car loads of live stock shipped from a point in Kentucky to Louisville, Kentucky, the effect of a general order upon shipments coming to Louisville from points in other States was neither argued by counsel nor considered by the court when the order was originally en-

tered. By appropriate amendment, however, the plaintiff now seeks an enlargement of the order of injunction so as to make it apply to all shipments by requiring the defendant, whenever requested by the consignor and consignee or owner of stock at any of its stations, and particularly at the break-up yards in South Louisville, Kentucky, to recognize the right of said parties to stop the property *in transitu* and to change the destination of said shipment, and that defendant be required to change said destination and make delivery of said cars at one of the points of physical connection between the tracks of defendant's lines and the tracks of the Southern Railway Company for delivery by that road to the consignee at the Central Stock Yards station.

The right of the parties to exercise the right of stoppage *in transitu* and the supplemental right to change the destination were considered and recognized in the second opinion (Rec. pp. 120 to 130) filed January 2, 1902, in passing upon the question of contempt for violating the order of injunction, and were not argued upon this final submission, except in so far as the exercise thereof might affect interstate commerce. It is objected, however, by defendant that the court can not constitutionally so enlarge the order of injunction because it would operate as a regulation of interstate commerce, either directly by requiring the defendant to "switch" cars which have come to this State from other States in the same way that it may require a switching of cars which have brought stock from a point within the State, or indirectly, by requiring defendant to recognize the right to change the destination of cars which have brought stock to Louisville from points beyond Kentucky, and to switch them after they have arrived in Louisville. This objection presents two interesting questions:

1. Is this local switching a part of commerce between States? And (2) if it is, is the requiring it to be done,

by the State Constitution, such a regulation of commerce as to constitute a violation of the clause of the Federal Constitution which confers upon Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes"?

That a mere switching movement after the main trip has been completed, and for delivery purposes is a part of commerce between States, may well be doubted. Mr. Justice Miller in referring to the difference between State and interstate commerce said:

> "It may be thus stated, that the power to regulate commerce is one which includes many subjects various and quite unlike in their nature; that whenever subjects of this power are in their nature *national,* or *requires one uniform system or plan* of regulation, they may be justly held to belong to that class over which Congress has the exclusive power of legislation; but that *local and limited matters,* not national in their character, which are most likely to be wisely provided for by such diverse rules as the localities and the authorities of the different States may deem applicable may be regulated by the legislatures of those States in the absence of any Act of Congress upon the same subject."

(Lectures on the Constitution, p. 454.)

If plaintiff were asking that the defendant be required to switch cars passing through Louisville for further transportation in other States, it might be contended that it was interstate commerce, but in the case at bar where the switching is a mere delivery at the end of the trip and for final purposes isn't it a purely local and limited matter which can not possibly affect further transportation?

Leaving that question open, however, and conceding for the sake of the argument, that the switching is a part of commerce from a shipment made, say in Tennessee, is it a forbidden regulation of that commerce?

When Mr. Madison's attention was called, near the close of the Convention of 1787, to the scope and meaning of the phrase, "to regulate commerce," in connection with the proposition to restrain the States from laying tonnage duties without the consent of Congress, he said, "These terms are *somewhat obscure,*" but in revising his remarks, he made them read, "these terms are *vague,* but seem to exclude this power of the States." (Documentary History of the Constitution, III, 752; Madison's Papers, III, 1585.)

Nevertheless, the convention did not agree with Mr. Madison, and the express prohibition upon State tonnage duties was carried and inserted in the instrument—the convention evidently being of opinion that the power of Congress to regulate commerce among the States, did not, *ex vi termini,* preclude the States from levying tonnage duties. This interesting bit of information constitutes about all of the debate upon the scope and meaning of this important clause. Indeed, the express power to regulate commerce did not appear either in the Virginia Plan presented by Governor Randolph at the opening of the Convention, or in the nineteen resolutions reported to the Convention by the Committee of the Whole on June 13th after a two weeks' debate upon the Virginia Plan. When the report of the committee had been further debated by the house for six weeks longer, and was, on July 26th, referred to the Committee of Detail in twenty-three resolutions to draft a constitution, the commerce clause did not yet appear. It first appeared on August 6th in the draft of a constitution by the Committee of Detail and in substantially the form in which it now appears in the Constitution. It thus appears to have come into the Constitution after all the principal features of it had been three times debated, and the wording of it was given little or no discussion.

(Meigs' "The Growth of the Constitution," 135.)

It is not a matter of surprise, therefore, that considerable confusion of thought and difference of opinion has arisen in applying this important constitutional power. The great subject of railroad transportation was wholly unknown to the framers of the Constitution. Foreign and coasting trade were their chief concern and were carried on entirely by means of sailing vessels! "And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to *insure uniformity of regulation against conflicting and discriminating State legislation.*" (Mobile County v. Kimball, 102 U. S. 691.) For some time several of the States had been making commercial war upon each other. Connecticut threw her ports wide open to British shipping, but laid a duty upon imports from Massachusetts. Pennsylvania discriminated against Delaware. New York required every little market boat loaded with garden truck from New Jersey to pay entrance fees and obtain clearances at the customhouse just as was done by the great ships from London, and while all firewood from Connecticut was compelled to pay a heavy duty. New Jersey retaliated by levying a confiscatory tax upon New York's lighthouse, located on Sandy Hook, while Connecticut suspended all commercial intercourse with her greedy neighbor. It was such bickerings as these that largely influenced the calling of the Federal Convention, and this certainly brought about the adoption of that part of the commerce clause that confided to Congress the regulation of commerce among the States. The cardinal idea and intention was to put an end to all laws whereby any one State was discriminating against the citizens of other States and in favor of its own citizens. As a part of this regulation of commerce, it necessarily followed that goods carried from one State into another State, or through a second and into a third State, should not be impeded or obstructed while passing through upon

its journey. But there are certain rights known as the police power of the State which the State may nevertheless exercise, although it may interfere with interstate commerce. State laws regulating quarantine, inspection, pilotage, wharfage, and public convenience, and for the protection of the lives, health, morals, safety, and property of its people are of this class.

The opinion of Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1 (1824), and the opinion of Mr. Justice Curtis in Cooley v. The Board of Wardens of the Port of Philadelphia, 12 How. 299 (1851), contain the reason and the philosophy of the law upon this subject. These opinions are in accord with the evident intention of the framers of the Constitution; since Story says it was moved, in the convention, to amend the article so as to give Congress "the sole or exclusive" power over commerce, but that the proposition was rejected by the vote of six States against five. (Comm. on Constitution, Sec. 1067, Note.) See Russell's "Police Power of the State," 1900.)

Furthermore, "the power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government is to be determined by the same rules." (Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285-300.) (Hennington v. Georgia, 163 U. S. 299.)

Referring to laws of this character in Gibbons v. Ogden, 9 Wheat. 1, 203 (1824), Chief Justice Marshall said:

> "No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation. If the legislative power of the Union can reach them it must be for national

purposes; it must be where the power is *expressly given for a special purpose*, or is *clearly incidental* to some *power* which is *expressly given*. It is obvious that the government of the Union, in the exercise of its express powers—that, for example, of regulating commerce with foreign nations and among the States—may *use means that may also be employed by a State in the exercise of its acknowledged powers;* that, for example, of regulating commerce *within* the State. If Congress license vessels to sail from one port to another in the same State, the Act is supposed to be necessarily incidental to the power expressly granted to Congress and implies no claim of a direct power to regulate the purely internal commerce of a State, or to act directly on its system of police. So, if a State, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, *it does not derive its authority from the particular power which has been granted to Congress, but from some other which remains with the State*, and *may be executed by the same means*. All experience shows that the same measure or measures scarcely distinguishable from each other may flow from distinct powers, but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other *so nearly as to be confounded*, there are other situations in which they are sufficiently distinct to establish their individuality. In our complex system, presenting the rare and difficult scheme of our general government whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous State governments, which retain and exercise all powers not delegated to the Union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective governments to execute their *acknowledged* powers would often be of the same description, and might sometimes interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

The foregoing passage is an excellent general chart for use in all cases of this character. It is frequently, however, quite difficult to distinguish between domestic and interstate commerce, or where one ceases and the other begins or what constitutes a regulation of commerce. The chief justice evidently had such cases in mind when he said that "although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are *other situations* in which they are sufficiently distinct to establish their individuality."

In Livingston & Fulton v. VanIngen, 9 Johns, 507 (1812), Chief Justice Kent, in reviewing the Commerce Clause of the Federal Constitution, said:

> "Upon the principles above laid down, the States are under no other constitutional restriction, and are, consequently, left in possession of a vast field of commercial regulation; all the internal commerce of the State by land and water remains entirely, and I may say exclusively, within the scope of its original sovereignty. The constitutional power relates to external, not to internal commerce, and it is confined to the regulation of that commerce. To what extent these regulations may be carried, it is not our present duty to inquire. The limits of this power seem not to be susceptible of precise definition. It may be difficult to draw an exact line between those regulations which relate to external and those which relate to internal commerce, *for every regulation of the one will directly or indirectly affect the other.* To avoid doubts, embarrassment, and contention on this complicated question, the general rule of interpretation which has been mentioned, is extremely salutary. It removes all difficulty by its simplicity and certainty."

Most of the State regulations of interstate commerce which have been determined to be obnoxious to the Federal Constitution relate to either navigation, taxes or

charges in transportation in some one of its forms, fixing of unreasonable compensation for services, discriminations against other States, duties on tonnage, and duties on imports and exports.

The case under consideration is relieved of most of these difficulties. No tax burden, discrimination or charge is imposed, the regulation consists merely of a police regulation intended by the State to conserve the public interests in the aid of commerce.

In applying the rule to these other situations, it is still sometimes quite difficult to establish the individuality of the one or the other power which has been constitutionally exercised, or whether the thing or Act regulated is domestic or interstate commerce. The line of distinction is frequently quite shadowy and difficult of determination. Thus, in W. U. Tel. Co. v. Texas, 105 U. S. 460, the sending of telegraphic messages from one State to another was interstate commerce; and in Robbins v. Shelby Co. Tax District, 120 U. S. 489, a drummer "going from State to State making sales by sample" was likewise engaged in interstate commerce; while in Hopkins v. U. S., 171 U. S. 578, 601, a solicitor going from one State to another State and procuring goods to be shipped back to the first State for sale was not engaged in interstate commerce. There, nevertheless, are some well-settled rules of construction, which may aid us very materially in the determination of the case in hand, though they do not control it directly. Assuming that the thing or Act regulated belongs to the category of interstate commerce and that the regulation is not a permissible police regulation, the regulation must, nevertheless, be a burden upon or an impediment to the interstate commerce instead of an aid of facility to it, and it must, furthermore, affect it directly and not merely by indirection.

In Mobile County v. Kimball, 102 U. S. 691, Mr. Justice Field said in reviewing the early contention that the right of Congress to regulate interstate commerce was

exclusively and not concurrent with the right of the States to do so in the absence of congressional action, and of the final conclusion that it depended upon the nature of the subject to be regulated, said:

> "Perhaps some of the divergence of views upon this question among former judges may have arisen from not bearing in mind the distinction between commerce as *strictly defined*, and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consist in intercourse and traffic, including in those terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. For the regulation of commerce as thus defined, there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as *thus defined* may not be inaccurate, *when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce.*"

In N. Y., N. H. & H. R. R. Co. v. New York, 165 U. S. 628, the question was as to the validity when applied to interstate trains, of a New York statute, forbidding the heating of passenger cars in a particular mode. The court said:

> "The statute in question is not directed against interstate commerce. Nor is it within the necessary meaning of the Constitution a regulation of commerce, although it controls in some degree the conduct of those engaged in such commerce. So far as it may affect interstate commerce it is to be regarded as legislation *in aid of commerce* and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations *within its limits.*"

Hopkins v. United States, 171 U. S. 578, was an action for the dissolution of the Kansas City Live Stock Exchange; and although it was brought under the Anti-Trust Act of 1890 it became necessary for the court to first determine whether the business of the Exchange was interstate commerce; and in that respect the opinion is useful in this case. In the course of the opinion Mr. Justice Peckham said:

> "We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is *an aid or facility to commerce*, and which, if it affect interstate commerce at all, does so only in an indirect and incidental manner?* * * An agreement may, in a variety of ways, affect interstate commerce, just as State legislation may, and yet, *like it*, be entirely valid, because the interference produced by the agreement, or by the legislation is not direct. (Case cited.) * * * There must be some direct and immediate effect upon interstate commerce in order to come within the act. * * * Many agreements suggest themselves which relate only to facilities furnished commerce, or else touch it only in an indirect way, while possibly enhancing the cost of transacting the business, and which at the time we would not think of as agreements in restraint of interstate trade or commerce. They are agreements which, in their effect, *operate in furtherance and aid of commerce* by providing for it facilities, conveniences, privileges, or services, but which do not directly relate to charges for its transportation, nor to any other form of interstate commerce. * * *
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> "The effect upon the commerce spoken of must be direct and proximate (N. Y., L. E. & W. R. R. Co. v. Pennsylvania, 158 U. S. 431). * * *
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> "Facilities may consist in privileges or conveniences provided and made use of, or in services rendered in aid of commerce as well as in the use of tangible property, and so long as they are facilities

and the charges not unreasonable an agreement relating to their amount is not invalid. * * * If charges of the nature described do not amount to a regulation of interstate trade or commerce because they touch it only in an indirect and remote way, or else, because they are in the nature of compensation for the use of property or privileges as a mere facility for that commerce, it would, for a like reason, seem clear that agreements relating to the amounts of such charges, among those who furnish the privileges or facilities, are not in restraint of that kind of trade. While the indirect effect of the agreements may be to enhance the expense to those engaged in the business, yet as the agreements are in regard to compensation for privileges accrued, for services rendered as a facility to commerce or trade, they are not illegal as a restraint thereon. * * *

"Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purpose of trade in any and all of its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted. (Cases cited.)

"But in all the cases which have come to this court, there is not one which has denied the distinction between a regulation which directly affects and embraces interstate trade or commerce, and one which is nothing more than a charge for a local *facility* provided for the transaction of such commerce. On the contrary the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

In L. & N. R. R. Co. v. Kentucky, 161 U. S. 677, 701, the State enjoined a proposed agreement for the consolidation of the appellant's road with certain other railroads, which extended from Kentucky into the State of Tennessee. It was contended that section 201 of the Ken-

tucky Constitution, which forbade the purchasing of competing railroads, is a regulation of interstate commerce and therefore void.

In answering that contention, Mr. Justice Brown, speaking for the court, said:

> "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. *All such regulations interfere indirectly, more or less with commerce between the States,* in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less according to the policy of the State within which the roads are operated, but are still within the competency of the Legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might perhaps lead to an inference that the police power can not be exercised over a subject confined exclusively to Congress by the Federal Constitution. But, while this is true, with respect to the commerce itself, it is not true with respect to the instruments of commerce. * * * It has never been supposed that the dominant power of Congress over interstate commerce took from the State the power of legislation with respect to the instruments of commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways of the country have been constructed under State authority, and it can not be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the

power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce and to forbid interference therewith; while to the States remain the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

In Louisville & Nashville R. R. Co. v. Kentucky, 183 U. S. 503, 518, the appellant contended that section 218 of the Kentucky Constitution, prohibiting a road from charging more for a short haul of freight than for a long one, was void because it interfered with interstate commerce. Upon that point Mr. Justice Shiras, in speaking for a unanimous court, said:

"The final contention, that Section 218 of the Constitution of Kentucky operates as an interference with interstate commerce, and is therefore void, need not detain us long.

"It is plain that the provision in question does not, in terms, embrace the case of interstate traffic. It is restricted in its regulation to those who own or operate a railroad within the State, and the long and short distances mentioned are evidently distances upon the railroad line within the State. The particular case before us is one involving only the transportation of coal from one point in the State of Kentucky to another by a corporation of that State. It may be that the enforcement of the State regulation forbidding discrimination in rates in the case of articles of a like kind carried for different distances over the same line may *somewhat affect commerce generally;* but we have frequently held that such a result is too remote and indirect to be regarded as an interference with interstate commerce; that the interference with the commercial power of the general government, to be unlawful, *must be direct,* and not the mere incidental effect of enforcing the police

powers of a State (N. Y., L. & W. R. R. Co. v. Pennsylvania, 158 U. S. 431; Henderson Bridge Co. v. Kentucky, 168 U. S. 150). A discussion of this subject will be found in the opinion of this court in Louisville & Nashville R. R. Co. v. Kentucky, 161 U. S. 701, where the same conclusion was reached."

It would seem sufficient to rest the decision of the case at bar upon the authority of the two cases last above quoted, for it is difficult to distinguish between them, in principle. If a car loaded with coal is a mere instrument of interstate commerce which Section 218 of the Kentucky Constitution can regulate as to charge for hauling it while traversing the State, it is equally plain that a car loaded with cattle is also a mere instrument of commerce and can be switched at its destination under Section 213 of the same Constitution. The latter instance is a no greater exercise of the police power than the former, if indeed it can be said to be as great. The appositeness of the coal case, however, to the case at bar, consists in the fact that the instrument of commerce in the two cases is identical. In each case the corporation is the same; is a creation of the State of Kentucky and the regulation is intended as an exercise of its police power for the benefit of its citizens. Nor is there any distinction between the case of a railroad company incorporated before, and that of one incorporated after the constitutional enactment. "As has been said of the one, so it may be said of the other, that the charter is taken and held subject to the power of the State to regulate and control the grant in the interest of the public" (183 U. S. 517), (Pa. R. R. v. Miller, 132 U. S. 75; Louisville Water Co. v. Clark, 143 U. S. 1; L. & N. R. R. Co. v. Kentucky, 161 U. S. 677.)

Lake Shore & Mich. Southern R. R. Co. v. Ohio, 173 U. S. 285 (1898), is an interesting case and bears upon the question. There, the State of Ohio, by statute, required railroad companies to stop at least three of their trains going each way, (if so many were run) at every city hav-

ing over three thousand inhabitants. A train belonging to defendant and going from New York to Chicago, having failed to stop as required by statute, suit was brought to recover the penalty prescribed for the breach of the statute. It was contended that the statute was void, as a regulation of interstate commerce. After a review of all the leading cases upon the subject, Mr. Justice Harlan, in delivering the opinion of the court, said:

"Consistently with these doctrines it can not be adjudged that the Ohio statute is unconstitutional. The power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety; whether legislation of either kind is inconsistent with any power granted to the general government is to be determined by the same rules.

"In what has been said we have assumed that the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, does not go beyond the necessities of the case, and is not directed against interstate commerce. * * *

"In our judgment the assumption that the statute of Ohio was not directed against interstate commerce, but is a reasonable provision for the public convenience, is not unwarranted. The requirement that a railroad company whose road is operated within the State shall cause three each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at any station, city or village of 3,000 inhabitants, for a time sufficient to receive and let off passengers, so far from being unreasonable, will greatly subserve the public convenience. * * * We perceive in the legislation of Ohio no basis for the contention that the State has invaded the domain of national authority or impaired any right secured by the National Constitution. In the recent case of Jones v. Brim, 165 U. S. 180, 182, it was adjudged that embraced within the police powers of a State was the establishment,

maintenance, and control of public highways, and that under such powers reasonable regulations incident to the right to establish and maintain such highways could be established by the State. And the State of Ohio by the statute in question has done nothing more than to so regulate the use of a public highway established and maintained under its authority as will reasonably promote the public convenience. It has not unreasonably obstructed the freedom of commerce among the States. Its regulations apply equally to domestic and interstate railroads. *Its statute is not directed against interstate commerce, but only incidentally affects it.* It has only forbidden one of its own corporations from discriminating unjustly against a large part of the public, for whose convenience that corporation was created and invested with authority to maintain a public highway within the limits of the State."

What there has been said applies with equal force to the case under consideration. The Kentucky Constitution is not directed against interstate commerce, but only incidentally affects it, in the exercise of the police power of the State, as against a corporation of its own creation, and for the convenience of the public. That the State has abundant power to do so, is established by the following decisions which I will merely cite, in addition to those already referred to, viz.: Sherlock v. Alling, 93 U. S. 99; Morgan's L. & T. R. & S. S. Co. v. Louisiana Board of Health, 118 U. S. 455; Smith v. Alabama, 124 U. S. 465; Nashville, C. & St. L. R'y Co. v. Alabama, 128 U. S. 96; M., K. & T. R'y Co. v. Haber, 169 U. S. 613. They are all cases involving State regulations more or less affecting interstate or foreign commerce, but were sustained upon the ground that they were not directed against, nor were direct burdens upon interstate or foreign commerce.

Counsel for defendant rely upon Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 203 (1885), in support of their contention that, "delivery" is a part of interstate commerce, and can not, therefore, be regulated by

the State Constitution. An examination of that case, however, will show at once that it has little or no application to the case under consideration. The Ferry Company, a New Jersey corporation, was engaged in interstate commerce between Camden, New Jersey, and Philadelphia, Pennsylvania, and had no property in Pennsylvania except a lease of a dock for landing purposes. The State of Pennsylvania levied a tax upon its capital stock, and it was held that the Ferry Company had no property within the State of Pennsylvania except the lease of its wharf, and that only could be taxed in Pennsylvania. There was no question of police power involved, and there was an attempt to tax the shares of a foreign corporation—not its tangible property within the limits of the State. McReynolds v. Smallhouse, 8 Bush, 447, 458, is more nearly in point. Moreover, the mere switching of a car, at its destination, can not with accuracy be said to be in fact, a part of, or a regulation of an interstate shipment. The trip has ended and the car has only to be side tracked or switched for the Southern road to deliver it to the plaintiff. It contemplates a new service wholly within the State of Kentucky.

In Chicago, M. & St. P. R'y Co. v. Becker, 32 Fed. Rep. 849, 854, the plaintiffs sought an injunction to restrain the Minnesota Railroad and Warehouse Commission from enforcing a regulation fixing switching charges in the city of Minneapolis, upon the ground that switching of cars coming from other States was a part of interstate commerce. The court, however, ruled differently, saying:

> "This brings me to the *principal question* involved in this controversy. It is claimed by the complainant that the order of the commission set up in the bill *is a regulation of interstate commerce*, and imposes no obligation to obey it, and consequently the attempted enforcement should be restrained. The supporting affidavits show that the cars switched

by the complainant in the majority of cases are loaded with goods and merchandise destined to points *outside* the limits of the State of Minnesota. The complainant alleges that three-fourths of the traffic is interstate commerce. If this is so, it is not important. The underlying question presented is, does the order of the State Commission regulate interstate commerce? I find no warrant for the claim advanced that it is an interference with or regulation of interstate commerce, and encroaches upon the powers of the Federal Government. It is true that the loaded cars switched contained freight to be transported to other States, or received from other States, as well as local freight for or from points within the State of Minnesota; but, unless the switching service is performed by the complainant, and cars are transferred from a shipper's warehouse or mill to be transported out of the State over a line of railway other than its own, no charge is made. The case presented is this: In order to afford facilities to shippers, the complainant has constructed short lines of road, or side tracks or switches, so called, from its yard or depot or main lines, running over and across the streets and highways to the various mills and manufacturing establishments in the city of Minneapolis; and its switches are so built as to enable it to take cars from the shippers at the mills, and deliver them to other lines of railway, or deliver cars to consignees received by it from other roads. When this service is performed, and the cars are to be transported from the city of Minneapolis over other roads, and when cars coming into that city over other roads are taken by the complainant over its own switches, and delivered to other roads or to consignees, a charge of one dollar and fifty cents per car is exacted for this switching service rendered, which is claimed to be reasonable and just; but if the cars are to be transported over its own line to the point of destination, or come into the city over complainant's main road, the service is free, and this separate and distinct charge, when made, is only for this local switching. This charge is not a part of the through

rate fixed and determined before hand, and has no reference to interstate shipment. The transportation of cars over the switches from the warehouses or mills to the depot, or from the depot to these mills, can be regulated in many respects by the commissioners, and the rate for performing the service fixed by virtue of the police power of the State in the same manner as the carriage by dray per load or distance is established for the public good, and I see no difference in the principle to be applied in such cases, although, incidentally, they may be connected with interstate commerce. *The service is local,* and there is nothing upon the face of the order of the commissioners indicating that it is intended to regulate interstate commerce, even if it is conceded that this carrying of freight over the switches is an act of interstate commerce, it does not necessarily follow that the order of the commission affecting this traffic is in violation of the Constitution of the United States. It is not every act that *affects* such commerce that amounts to a *regulation* of it; and this order of fixing the price per car for service rendered, to which the order applies, is not related to the contract for carrying the freight outside the limits of the State of Minnesota, and is not a part of it."

Again, in State of Iowa v. Chicago, M. & St. P. R'y Co., 33 Fed. 391, 395, we have another specific switching case in which Judge Shiras said:

"What then are the questions arising in the present controversy? The proceeding itself is one instituted by the State of Iowa under the provisions of an act of the State Legislature, passed for the purpose of providing a legal method of enforcing the conclusions, or orders of the State Board of Railroad Commissioners. The particular order was one made by the commissioner, which, in effect, holds that certain side and spur tracks, laid down over the streets and alleys of the city of Dubuque are, under the laws of the State of Iowa and the ordinances of the city of Dubuque, *public highways,* and not the

private property of the defendant company, and that for the reasons set forth in the Commissioner's Opinion, the defendant company was under legal obligation to pass over such side and spur tracks, *the cars of the other companies*, when such passage became necessary in order to enable the other companies to reach the factories or warehouses of their customers; and the commissioners also fixed the rates to be charged for the work to be done by the company when thus engaged in performing this switching. It is clearly apparent, from this brief statement, that the complainant does not base the right, asserted and sought to be enforced against the company, upon any part of the Constitution or laws of the United States. But, on the contrary, to establish the right, if any such exists, dependence must be had upon the State laws and ordinances of the city of Dubuque, coupled perhaps with principles of general jurisprudence, not depending for their existence or authority upon the Federal Constitution or laws. The Federal question, if any exist, must be sought, then, in the defense or defenses interposed by the defendant, and substantially it is claimed that the action of the commissioners is a violation of the Federal Constitution in that it *is a regulation of interstate commerce*.

"Can it be fairly said that if the State of Iowa, by direct legislative action, or through the power conferred upon the city of Dubuque, has provided that certain railway tracks laid down in and over the public streets of the city of Dubuque, shall be and remain public highways, open to the use of every railway coming into Dubuque, that it was thereby regulating interstate commerce, and exercising a power prohibited by the Federal Constitution? When the State of Iowa, and the city of Dubuque under its authority, gave permission to the defendant company to lay down tracks along certain streets, or to use those already laid down, upon condition that such tracks should be public and open to the use of the citizens of Dubuque, how did it regulate interstate commerce, or place any burden, hinderance, or restriction thereon? But it is said that the State,

through the agency of its commissioners, is seeking to fix the rate to be charged for the switching required to be done by the defendant, and that thereby interstate commerce is affected and regulated because the cars thus switched may be filled with merchandise or other property brought *from other States* into Iowa, or intended to be carried from Iowa into other States. It will be noted that the operations of the defendant company, when engaged as a common carrier of persons or property, either wholly in Iowa, or between Iowa and other States, are not in any manner affected or regulated, *either as to the mode of carriage, or to the price to be paid*, by the order of the commissioners. The argument is that the property conveyed by the other railway companies may form part of the commerce between the States, and that in this way fixing the rate to be charged by the defendant company, will affect the rate for the entire transportation. The duty imposed upon the defendant company is that of passing the cars of the other defendant companies over the side and spur tracks in question, all of which are included within the limits of the city of Dubuque, and within the boundary of the State of Iowa."
(See also Minneapolis & St. Louis R. R. Co. v. Minnesota, 186 U. S. 257.)

Applying the clear line of authority laid down in the foregoing decisions, and particularly that of the Kentucky cases, to the facts of this case, I do not see how the conclusion can be avoided that section 213 of the Kentucky Constitution requiring a switching of cars, is a valid exercise of the police powers of the State for the convenience of its citizens; that it is not intended to affect interstate commerce, and so far as it may be affected thereby it will be merely incidental and indirect, and that it is not such a regulation of interstate commerce as is prohibited by the Federal Constitution.

SHACKELFORD MILLER, *Judge.*

April 30th, 1904.

APPENDIX, PART III.

CHAPTER 1489.

AN ACT to incorporate the Louisville Railway Transfer Company, and conferring certain powers in relation thereto, on the Louisville, Cincinnati & Lexington and the Louisville & Nashville Railroad Companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY:

§ 1. That Norvin Green, H. D. Newcomb, Joshua F. Speed, George W. Norton, Lyttleton Cooke, W. B. Caldwell, E. D. Standiford, Albert Fink, and Samuel Gill, and their associates and successors, be, and they are hereby, incorporated by the name and style of the Louisville Railway Transfer Company; and shall, by such name, have a perpetual succession with all the rights and privileges of a body-politic and corporate, including the right to purchase and hold, sell and convey real estate; to have and use a common seal, and the same to alter or amend at pleasure.

§ 2. Said company is hereby authorized and empowered to contract with the Louisville, Cincinnati & Lexington Railroad Company and the Louisville & Nashville Railroad Company, and other parties interested, for the right of way, roadbed, and other properties pertaining to the same, and to build, or complete building, equip, and operate a railroad through the city of Louisville, with a single or a double track, on and along the route granted to said railroad companies by the city of Louisville, connecting the Louisville, Cincinnati & Lexington Railroad with the Louisville & Nashville Railroad; and the said Louisville, Cincinnati & Lexington and Louisville & Nashville Railroad Companies are hereby authorized

and empowered to sell, convey, and transfer to the said Louisville Railway Transfer Company their respective rights and interests in said connecting line of railroad now partially constructed; and to receive payment therefor either in money or in the stock or bonds of said Louisville Railway Transfer Company, by this Act authorized to be issued, as may be agreed on between them. And the said Louisville Railway Transfer Company, on making such purchase from the said railroad companies, shall succeed to all the rights and powers, and assume all the obligations of said companies, contained in or growing out of the contract of said companies with the city of Louisville, or the charter rights and obligations of said companies, or either of them, or in any manner pertaining to the acquisition of right of way and construction of said connecting railroad.

§ 3. The capital stock of said Louisville Railway Transfer Company shall be one hundred thousand dollars, in shares of one hundred dollars each, for which capital stock the said Louisville, Cincinnati & Lexington Railroad Company and Louisville & Nashville Railroad Company may each subscribe for, hold, and own an amount not exceeding one equal half of said stock, which shall be paid for at such time and in such manner as may be agreed upon with, or shall be assessed and called by, the board of directors of the said Louisville Railway Transfer Company. That said railroad company shall not sell and transfer said stock to any other person or corporations without the consent of the city, evidenced by a resolution of the general council. The capital stock may be thereafter increased, from time to time, by stock dividends, or by further subscriptions thereto, for the object of carrying out and completing any of the works authorized in this Act, in such sum or sums, at such time or times, and on such terms and conditions, as the board of directors of said Railway Transfer Company shall determine; *Provided, always,* That in any subscription

for, or sale of, additional capital stock, the said Louisville, Cincinnati & Lexington and the said Louisville & Nashville Railroad Companies, shall each be entitled to take one equal half of such increase.

§ 4. When the original one thousand shares of capital stock shall have been subscribed, the corporators named in this Act, or a majority of them, shall designate the time and place of meeting of said stockholders for organization, giving at least three days' notice of such meeting, when the company shall be organized by the election of six directors to serve for the term of one year, and until their successors are duly elected and qualified, three of whom shall be stockholders in the Louisville, Cincinnati & Lexington and three stockholders in the Louisville & Nashville Railroad Companies; and in case such meeting shall fail to make such organization and election of directors, such meeting may adjourn to any other day it may designate, or failing to do that, may be again called together by said corporators, or a majority thereof, until an organization shall be effected. Each director, before entering upon his duties as such, shall make and subscribe an oath that he will faithfully discharge his duties as such director in the interest of said company. The board of directors shall elect one of their number president and such other officers as may be designated by the by-laws; and the by-laws shall also designate the time and place of annual meetings of the stockholders for election of directors, the manner of filling vacancies in the board, and make other rules and regulations for the government of the company not inconsistent with the laws of this Commonwealth and of the United States. Such by-laws shall be made, altered, or amended by a majority in interest of the stockholders.

§ 5. The Louisville Railway Transfer Company may acquire the right of way, construct and operate any *branch roads* connecting with other railroads terminating at Louisville, or connecting therewith by bridge or ferry,

extensions and switches to their said connecting railroads, for the accommodation of the commercial and manufacturing business of the city of Louisville, said city consenting thereto; and for the purpose of acquiring the right of way for said *connecting railroad*, and for such extensions, *branches*, and switches, and for acquiring lands for depots, stations, turnouts, machine and car shops, said company shall have power to condemn, by commissioners who shall be appointed by the presiding judge of the Jefferson County Court, in like manner, and with all the powers and franchises granted to the Louisville & Frankfort and Lexington & Frankfort Railroad Companies, for the construction of their Covington & Newport branch road. *That all shippers over or along the line of the connecting roads shall be entitled to side-tracks and switches; and said Transfer Company shall furnish to all shippers by the car load empty cars at either end of said road, or at any switch or side-track thereon, and to deliver loaded cars at either end of the road, or at any switch or side-track, at $1 per loaded car, and empty cars free of charge, in accordance with the contract with the city of Louisville.*

§ 6. To aid said company in the acquisition, completion, and equipment of said connecting railroad, its extensions, depots, switches, and other works, said Louisville Railway Transfer Company may issue its bonds in sums of $1,000 or less, to an extent not exceeding $300,000, with coupon notes for accruing interests thereto attached, said bonds having not longer than thirty years to run, and bearing a rate of interest not exceeding ten per cent. per annum; and may secure payment thereof by mortgage lien or liens on the property and franchises and net earnings of said company; and said bonds may be further secured, in whole or in part, and as to the payment of interest or principal, or both, by the indorsement or guarantee of the Louisville, Cincinnati & Lexington Railroad Company and of the Louisville & Nashville Rail-

road Company, or either of them; and said bonds may be sold, pledged, or hypothecated by the said Louisville Railway Transfer Company, for the purpose of raising money for the purchase or acquirement of said roadway, and material and properties for the completion and equipment of the same, its extensions, switches, depots, and other necessary works, in such manner and on such terms as the board of directors shall authorize and direct; and said Louisville, Cincinnati & Lexington and Louisville & Nashville Railroad Companies may, jointly or severally, indorse or guarantee payment of any or all of said bonds; and may purchase, hold, or sell the bonds and stock of said Louisville Railway Transfer Company.

§ 7. The Louisville, Cincinnati & Lexington, and the Louisville & Nashville Railroad Company, shall both or either have full power to contract with said Louisville Railway Transfer Company as to the transfer to said Louisville Railway Transfer Company of the rights and properties already acquired by them, or either of them, in said connecting railroad, as to the terms and manner of completing and operating the same; and when the existing rights of property and franchises shall be fully transferred and relinquished to the said Louisville Railway Transfer Company and the said Louisville, Cincinnati & Lexington and Louisville & Nashville Railroad Companies shall be reimbursed for their respective outlays thereon, the full title thereto shall vest in the said Louisville Railway Transfer Company free from all encumbrances, as if the said Louisville, Cincinnati & Lexington, and Louisville & Nashville Railroad Companies had acquired and owned it only in trust for the said Louisville Railway Transfer Company. Said connecting railroad may be leased to and operated by either of said railroad companies mentioned, or by other parties, as may be agreed.

§ 8. The transportation charge for transferring freight over said road may be as high, but shall not exceed

fifty cents per ton for freight, thirty-five cents for each passenger, fifty cents for each freight car, and $1 for each passenger, baggage, or express car; *Provided*, That said Transfer Company shall not be bound to carry any lot or single package of freight for less than ten cents.

§ 9. This act shall take effect from its passage.

Approved March 10, 1871.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY *v.* CENTRAL STOCK YARDS COMPANY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 51. Argued December 10, 11, 1908.—Decided January 25, 1909.

A provision in the constitution of a State that a carrier must deliver its cars to connecting carriers without providing adequate protection for their return, or compensation for their use, amounts to a taking of property without due process of law within the meaning of the Four-

teenth Amendment; and so held as to §§ 213, 214 of the constitution of Kentucky.

The law must save the rights of parties and not leave them to the discretion of the courts as such.

Where a general provision in the constitution of a State is void as taking property without due process or compensation, and compensation has not been provided by statute, the defect cannot be cured by the courts inserting provisions for compensation in judgments under such constitutional provision.

The duty of a carrier to accept goods tendered at its station does not require it to accept cars offered by competing roads at arbitrary points near its terminus for the purpose of using its terminal station. A law requiring the carrier so to do is unconstitutional as taking property without due process of law.

97 S. W. Rep. 778, reversed.

THE facts are stated in the opinion.

Mr. Helm Bruce, with whom *Mr. Henry L. Stone*, *Mr. James P. Helm* and *Mr. Kennedy Helm* were on the brief, for plaintiff in error:

So far as concerns interstate shipments of live stock, the whole matter is concluded by the judgment of the Federal court in the former litigation in *Central Stock Yards Co.* v. *Louisville & Nashville R. R. Co.*, 192 U. S. 568, and that judgment is a bar to the relief sought in this case as to such interstate shipments. *Dupasseur* v. *Rocherau*, 21 Wall. 130; *Embry* v. *Palmer*, 107 U. S. 3; *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.*, 120 U. S. 141; *Deposit Bank* v. *Frankfort*, 191 U. S. 499; *Cromwell* v. *Sac County*, 94 U. S. 353; *Smith* v. *Auld*, 31 Kansas, 262.

Sec. 213, Kentucky constitution, as construed by the highest state court, in so far as it attempts to control interstate shipments, is void as attempting to regulate interstate commerce. *Central Stock Yards Co.* v. *Louisville & Nashville R. R. Co.*, 118 Fed. Rep. 120, and cases there cited; *McNeil* v. *Southern Ry.*, 202 U. S. 543; *Central of Georgia* v. *Murphy*, 196 U. S. 194; *Houston &c. Ry. Co.* v. *Mayes*, 201 U. S. 321.

Sec. 213, as so construed, in requiring plaintiff in error to

deliver up possession of its cars to another railroad compa
deprives the former of its property without due process of l
McGehee on Due Process of Law, 291; *Mo. Pac. Ry. Co*
Nebraska, 164 U. S. 403; *Minnesota* v. *Chicago &c. R. Co.*
Minnesota, 402; *Chicago, Burlington &c. Ry. Co.* v. *Chicago,*
U. S. 266; *Lankford* v. *County of Ramsay*, 16 Minnesota, 3
375. The following cases, cited in opinion of court bel
discussed and distinguished: *Peoria &c. Ry. Co.* v. *Chic*
R. I. & P. Ry. Co., 109 Illinois, 135; *S. C.*, 50 Am. Rep. 6
Burlington &c. Ry. Co. v. *Dey*, 82 Iowa, 312; *S. C.*, 12 L. R.
436; *S. C.*, 31 Am. St. Rep. 477; *Jacobson* v. *Wisconsin*
Co., 71 Minnesota, 519; *S. C.*, 70 Am. Rep. 358.

Sec. 213, as so construed, in requiring plaintiff in error
devote its terminals in Louisville to the use of other railro
and to mere local transfers not connected with the traffic
plaintiff in error, deprives it of its property without due proc
of law. *Atlantic Coast Line Ry. Co.* v. *North Carolina Cor*
ration Commission, 206 U. S. 1; *Wisconsin &c. R. R. Co.*
Jacobson, 179 U. S. 287; *Martin* v. *District of Columbia*, 2
U. S. 135.

Mr. Joseph C. Dodd, with whom *Mr. John L. Dodd* was
the brief, for defendant in error:

The provisions of §§ 213, 214, Kentucky constitution, a
§§ 818, 819, Kentucky General Statutes, as construed by t
highest court of that State, do not deny the plaintiff in er
any Federal right or privilege. *L. & N. R. R. Co.* v. *Cent*
Stock Yards Co., 30 Ky. Law Rep. 18, 39; *Lake Shore &c. R.*
Co. v. *Smith*, 173 U. S. 697; *Minn. & St. L. Ry. Co.* v. *Min*
R. R. & Warehouse Co., 186 U. S. 261; *Penn. R. R. Co.*
Miller, 132 U. S. 75; *Louisville Water Co.* v. *Clark*, 143 U. S.
L. & N. R. R. Co. v. *Kentucky*, 161 U. S. 677; *S. C.*, 183 U.
513; *M., K. & T. Ry. Co.* v. *Hughes*, 169 U. S. 613; *Penn. R.*
Co. v. *Hughes*, 191 U. S. 489; *Houston & Tex. Cent. R. R. C*
v. *Mayes*, 201 U. S. 321; *Chicago, Milwaukee &c. Ry. Co.*
Solan, 169 U. S. 137, 138; *Chicago, M. & St. P. Ry. Co.*

Becker, 32 Fed. Rep. 849; *Iowa* v. *Chicago, M. & St. P. Ry. Co.*, 33 Fed. Rep. 391, 395; Charter of Louisville Railway Transfer Company, Appendix, Part III, see § 5.

There is also a contract between the city of Louisville, the Louisville Railway Transfer Co. and the plaintiff in error. *Sherlock* v. *Alling*, 92 U. S. 99; *Nashville, C. & St. L. R. R. Co.* v. *Alabama*, 128 U. S. 96; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. Ry. Co.* v. *New York*, 165 U. S. 628.

The police power of the State cannot be bargained away or contracted against and when, within such power, a duty of a common carrier is required by constitutional or statutory provision the question of inconvenience or expense is immaterial. 4 Debates of Kentucky Const. Convention, 5118–5162; *Butchers' & Drovers' Stock Yards Co.* v. *L. & N. R. R. Co.*, 67 Fed. Rep. 36; *Covington Stock Yards Co.* v. *Keith*, 139 U. S. 128; *L. & N. R. R. Co.* v. *Kentucky*, 108 Kentucky, 628; *S. C.*, 26 Ky. Law Rep. 597; *L. & N. R. R. Co.* v. *Pittsburgh & Kanawha Coal Co.*, 111 Kentucky, 960; *S. C.*, 23 Ky. Law Rep. 1318; *L. & N. R. R. Co.* v. *Williams*, 95 Kentucky, 199; *S. C.*, 15 Ky. Law Rep. 548; *Burlington, C. R. & N. R. R. Co.* v. *Dey*, 82 Iowa, 336; *Peoria & P. N. Ry. Co.* v. *Chicago, R. I. & P. Ry. Co.*, 109 Illinois, 139; *Jacobson* v. *Wisconsin, Minn. & P. R. R. Co.*, 71 Minnesota, 532; *Michigan C. R. R. Co.* v. *Smithson*, 45 Michigan, 221; *McCoy* v. *C., I., St. L. & C. R. R. Co.*, 13 Fed. Rep. 3; *Coe* v. *L. & N. R. R. Co.*, 3 Fed. Rep. 778; *Interstate Stock Yards Co.* v. *Railroad Companies*, 99 Fed. Rep. 472; *L., E. & St. L. Consolidated Ry. Co.* v. *Wilson*, 18 L. R. A. 105; *Railroad Company* v. *Goodridge*, 149 U. S. 680; *Inman* v. *St. L. S. W. Railway Co.*, 37 S. W. Rep. 37; *T[illegible] S. F. R. R. Co.* v. *Denver & N. O. R. R. Co.*, 110 U. S. [illegible]; *State* v. *Wabash, St. L. & P. R. Co.*, 83 Missouri, 144; *Mo. Pac. Railway Co.* v. *Wichita Grocery Co.*, 40 Pac. Rep. 899; *S. C.*, 2 Elliott on Railroads, §§ 1432, 1440; *Penna. R. R. Co.* v. *Jones*, 155 U. S. 333; *Daner* v. *N. Y. &c. R. R. Co.*, 50 How. 428; *Little Miami R. R. Co.* v. *Washburn*, 22 Ohio, 330; *Parker* v. *C. S. B. Q. R. R. Co.*, 56 Connecticut, 137; *Bosworth* v. *Chicago Ry. Co.*, 37

Fed. Rep. 72; *Railroad Co.* v. *Manufacturing Co.*, 16 Wall. 318; *Vincent* v. *C. & A. R. R. Co.*, 49 Illinois, 41; *Coe* v. *L. & N. R. R. Co.*, 3 Fed. Rep. 778; *In re Patterson*, 3 Fed. Rep. 89; *North* v. *Transportation Co.*, 146 Massachusetts, 315; *M. S. & I. R. R. Co.* v. *Day*, 20 Illinois, 375; *Beers* v. *Wabash, St. L. & P. R. R. Co.*, 34 Fed. Rep. 244; *L. & N. R. R. Co.* v. *Odell*, 33 S. W. Rep. 611; *Seasongood &c. Co.* v. *Tenn. & Ohio Transp. Co.*, 21 Ky. Law Rep. 1144; *McNeill* v. *Southern Ry. Co.*, 202 U. S. 445; *Atlantic Coast Line R. R. Co.* v. *North Carolina Corp. Com.*, 206 U. S. 1.

Sec. 4 of the contract of plaintiff in error with the Bourbon Stock Yards to deliver to it all live stock brought over plaintiff in error's lines to Louisville, is in contravention of the laws of Kentucky, against public policy and void, and in no event relieves plaintiff in error of the duty imposed by law to receive, switch, and deliver such stock, destined to the Central Stock Yards, to connecting carriers for delivery at said Central Stock Yards. *L. & N. R. R. Co.* v. *Central Stock Yards Co.*, 30 Ky. Law Rep. 18, 39; *Bedford-Bowling Green Stone Co. &c.* v. *Oman &c.*, 115 Kentucky, 369; *S. C.*, 24 Ky. Law Rep. 2274; *L. & N R. R. Co.* v. *Pittsburgh & Kanawha Coal Co.*, 111 Kentucky, 960; *McCoy* v. *C. & I., St. L. C. R. R. Co.*, 13 Fed. Rep. 5; *Munn* v. *Illinois*, 94 U. S. 139; *Commonwealth* v. *L. & N. R. R. Co.*, 27 Ky. Law Rep. 497; *Anderson* v. *Jett*, 89 Kentucky, 375; *S. C.*, 11 Ky. Law Rep. 570; *Peoria & R. I. R. R. Co.* v. *C. V. M. Co.*, 68 Illinois, 489; *Inter Ocean Co.* v. *Associated Press*, 184 Illinois, 448; *Chicago & N. M. Ry. Co.* v. *People*, 56 Illinois, 365; *Sanford* v. *Railroad Co.*, 24 Pa. St. 382; *State* v. *Hartford & N. H. Ry. Co.*, 29 Connecticut, 538; *Coe* v. *L. & N. R. R. Co.*, 3 Fed. Rep. 778.

The shipper and owner of property, even after the delivery thereof to a common carrier, and after the bill of lading has been signed and delivered, or after the goods have passed from the possession of the initial carrier into that of a succeeding one, may either stop the same in transit or change the destination thereof. Hutchinson on Common Carriers (2d ed.),

§§ 134, 337; *Sutherland* v. *Second National Bank of Peoria*, 78 Kentucky, 250; *L. & N. R. R. Co.* v. *Hartwell*, 99 Kentucky, 436; *Strahorn* v. *Union Stock Yards & Transfer Co.*, 43 Illinois, 424; Benjamin on Sales, § 830; Smith's Mercantile Law, Pomeroy's ed., § 634; *Michigan Southern & Northern Ind. Ry. Co.* v. *Day*, 20 Illinois, 375; *Lewis* v. *Galena & Chicago U. R. R. Co.*, 40 Illinois, 281; *London & N. W. Ry. Co.* v. *Bartles*, 7 Hurlston & Norman Reps. 400; *Scothorn* v. *Railway Co.*, 8 Exch. Rep. 345; *L. & N. R. R. Co.* v. *Kentucky*, 183 U. S. 513; *L. & N. R. R. Co.* v. *Williams*, 95 Kentucky, 199; *Minn. & St. Louis Ry. Co.* v. *Minn. R. & W. Co.*, 186 U. S. 261; *Munn* v. *Illinois*, 94 U. S. 113; *Davidson* v. *New Orleans*, 96 U. S. 97; *Railroad Commission Cases*, 116 U. S. 307; *Mobile County* v. *Kimball*, 102 U. S. 691; *Gibbons* v. *Ogden*, 9 Wheat. 1; *Cooley* v. *Board of Wardens of Port of Philadelphia*, 12 How. 299; *Lake Shore & N. S. R. Co.* v. *Ohio*, 173 U. S. 285; *Hennington* v. *Georgia*, 163 U. S. 299; *Livingston & Fulton* v. *Van Ingen*, 9 Johns. 507; *Western Union Telegraph Co.* v. *Texas*, 105 U. S. 460; *Robbins* v. *Shelby Tax District*, 120 U. S. 489; *Hopkins* v. *United States*, 171 U. S. 578; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *N. Y., L. E. & W. Ry. Co.* v. *Pennsylvania*, 158 U. S. 431; *L. & N. R. R. Co.* v. *Kentucky*, 161 U. S. 677; *S. C.*, 183 U. S. 503; *Henderson Bridge Co.* v. *Kentucky*, 166 U. S. 150; *S. C.*, 183 U. S. 517; *Penna. R. R. Co.* v. *Miller*, 132 U. S. 75; *Louisville Water Co.* v. *Clark*, 143 U. S. 1; *Jones* v. *Brim*, 165 U. S. 180; *Sherlock* v. *Alling*, 93 U. S. 99; *Morgan's L. & T. R. & S. S. Co.* v. *Louisiana State Board of Health*, 118 U. S. 455; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, C. & St. L. R. Co.* v. *Alabama*, 128 U. S. 96; *Mo., K. & T. Ry. Co.* v. *Haber*, 169 U. S. 613.

The decisions in the cases of *Central Stock Yards Co.* v. *Louisville and Nashville R. R. Co.*, 192 U. S. 568; *S. C.*, 118 Fed. Rep. 113, are not conclusive of the rights of the parties hereto. *Smith* v. *Auld*, 31 Kansas, 262; Black on Judgments (2d ed.), § 733; *Cromwell* v. *Sac County*, 94 U. S. 351; *Fairfield* v. *Gallatin County*, 100 U. S. 47; *Polk's Lessee* v. *Wendess*, 9

Cranch, 87; *Nesmith* v. *Sheldon*, 7 How. 812; *Walker* v. *State Harbor Commission*, 17 Wall. 648; *Elmdorf* v. *Taylor*, 10 Wheat. 152; *Green* v. *Neal's Lessee*, 6 Pet. 291; *Leffingwell* v. *Warren*, 2 Black, 599; *Sumner* v. *Hicks*, 2 Black, 532; *Olcott* v. *The Supervisors*, 16 Wall. 678; *State Railroad Tax Cases*, 92 U. S. 575; *Rowan &c.* v. *Runnels*, 5 How. 134; *Suydam* v. *Williamson*, 24 How. 427; *In re Duncan*, 139 U. S. 499; *Leeper* v. *Texas*, 139 U. S. 462; *Bucher* v. *Railroad Co.*, 125 U. S. 555; *Louisville &c. Ry. Co.* v. *Mississippi*, 133 U. S. 587; *Beauregard* v. *New Orleans*, 18 How. 499; *Western Union Tel. Co.* v. *James*, 162 U. S. 650; *Wisconsin &c. Ry. Co.* v. *Jacobson*, 179 U. S. 287; *Lake Shore &c. Ry. Co.* v. *Ohio*, 173 U. S. 285; *Smith* v. *Alabama*, 124 U. S. 465; *Sherlock* v. *Alling*, 93 U. S. 99; *Minneapolis &c. Ry. Co.* v. *Minn. R. R. & W. Co.*, 186 U. S. 257; *Chicago &c. R. R. Co.* v. *Solan*, 169 U. S. 133.

Mr. Justice Holmes delivered the opinion of the court.

This is a proceeding in equity prosecuted in the courts of Kentucky, similar in the main to one in the United States courts between the same parties, that was decided by the Circuit Court of Appeals in 118 Fed. Rep. 113, and by this court in 192 U. S. 568. The latter was brought by the Central Stock Yards Company, a Delaware corporation, against the Railroad Company, a Kentucky corporation, to compel it to receive live stock tendered to it outside the State of Kentucky for the Central Stock Yards station, and to deliver the same at a point of physical connection between its road and the Southern Railway, for ultimate delivery to or at the Central Stock Yards. The Central Stock Yards station is at the Central Stock Yards, just outside the boundary line of Louisville, Kentucky, on the Southern Railway Company's line, and by agreement between the two companies the Central Stock Yards were the live stock depot for the purpose of handling live stock to and from Louisville on the Southern Railway. The Louisville and Nashville Railroad, by a similar arrangement, had made the Bourbon Stock Yards its

live stock depot for Louisville, and declined to receive live stock billed to the Central Stock Yards, or to deliver live stock destined to Louisville elsewhere than at the Bourbon Yards. There were physical connections between the Louisville and Nashville and the Southern tracks at a point between the two stock yards which was passed by the greater portion of the live stock carried by the Louisville and Nashville Company, and at another point that would be more convenient for delivery, a little further to the northward. In order to deliver as prayed the Louisville and Nashville would have been compelled either to build chutes or to hand over its cars to the Southern Railway. The right was claimed under the Interstate Commerce Act of February 4, 1887, c. 104, § 3, 24 Stat. 379, and the constitution of Kentucky, especially § 213, p. 147, Ky. Stats. Carroll, 1903. The Circuit Court of Appeals and this court agreed that the right was not conferred by the former act. As to the constitution of Kentucky, the Circuit Court of Appeals held that if it could be given any such construction as to make it purport to give the plaintiff a right to the relief sought, it would be making a void attempt to regulate interstate commerce. This court, on the general principle that a construction was to be adopted, if possible, that would save the instrument from constitutional objections, followed the suggestion of the Circuit Court of Appeals, read the section as not requiring the railroad to deliver its own cars, and affirmed a decree dismissing the bill.

The material sections of the constitution of Kentucky are as follows:

"SEC. 213. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and despatch, and without any discrimination as to

charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business.

"SEC. 214. No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation, for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier."

The present case was begun by the defendant in error earlier than the one just stated, and sought similar relief without regard to the place where the stock was received. A preliminary injunction was issued, and soon led to proceedings for contempt on the charge that it had been disobeyed. The court of first instance held that the injunction applied to an interstate shipment when the owner had sought to bill it to the Southern Railway at Louisville for delivery to the Central Stock Yards and had been refused, and thereafter, at the break-up yards, so called, of the Louisville and Nashville road, by giving notice to change the destination, had attempted to bring about the desired result. This decision was reversed by the Court of Appeals, *Louisville & Nashville R. R. Co.* v. *Miller*, 112 Kentucky, 464, and thereupon the beforementioned bill in the United States court was brought, to deal with interstate shipments, with a prayer, also, that the railroad be required to recognize changes of destination; while the present proceeding was kept on foot to cover all that it lawfully might. At a later date the petition, as it is called, in this case, was amended so as to pray that the plaintiff in error might be required, upon tender by the Southern Railway, to receive, at a point of physical connection

with the Southern Railway, live stock from the Central Stock Yards, and to deliver the same to the consignee at the Bourbon Stock Yards or any depot on its line.

After the decision in the other case the Railroad Company asked leave to plead the decree as a bar to so much of the relief in the present action as relates to stock shipped or desired to be shipped from points outside of Kentucky to points within Kentucky. The trial court, being of opinion that the decree would not be a bar, refused leave, but ordered the proposed amendment to be made part of the record for the purpose of appeal. After final hearing a judgment was entered for the plaintiff, the defendant in error, granting all the prayers of the bill. The Railroad Company was ordered (1) to receive at its stations in Kentucky, and "to bill, transport, transfer, switch and deliver in the customary way," at some point of physical connection with the tracks of the Southern Railway, and particularly at one described, all live stock or other freight consigned to the Central Stock Yards or to persons doing business there. (2) It was ordered further, to transfer, switch and deliver to the Southern Railway at the said point of connection, "any and all live stock or other freight coming over its lines in Kentucky consigned" to the Central Stock Yards or persons doing business there. (3) It was ordered further, to receive at the same point and to "transfer, switch, transport and deliver all live stock" consigned to any one at the Bourbon Stock Yards, "the shipment of which originates at the Central Stock Yards;" with proviso requiring pay or tender of proper charges for its services, whenever demanded, at the time such live stock or other freight is offered. (4) Finally the Railroad Company was required, whenever requested by the consignor, consignee, or owner of the stock, "at any of the stations, and particularly at its break-up yards in South Louisville, Kentucky," to recognize their right to change the destination, and upon payment of the full Louisville freight rate and proper presentation of the bill of lading duly indorsed, the railroad was required to change the destination and deliver at a point of connection with the Southern Railway tracks for

delivery by the latter to the Central Stock Yards. This judgment was affirmed by the Court of Appeals, whereupon this writ of error was brought. The points relied upon are that due credit was denied to the decree by the United States court; that if the constitution of Kentucky purports to authorize the requirement in the judgment as to delivery of shipments from outside the State, it attempts to regulate commerce among the States; that if the same instrument authorizes the requirement in the judgment that the Railroad Company should give up possession of its cars to the Southern Railway Company it attempts to deprive the railroad of its property without due process of law; and that the same constitutional objection applies to the attempt to make the railroad do switching work over its terminal property in Louisville between two points in the city when the shipment was neither coming into the city nor going out of the city over the lines of the plaintiff in error's road.

The Court of Appeals found itself unable to pass over the bridge laid by this court in its construction of the state constitution, § 213. It held that that section did purport to require the plaintiff in error to deliver its own cars, under the circumstances of the case, to the extent of the judgment that it affirmed. It declined to follow the decision of this court that for the purposes of the case before it, the two stock yards stood on the same footing as if they were the stations of two railroads placed side by side. It decided that the state constitution as construed by it did not attempt to regulate commerce among the States, and, no doubt for that reason, disregarded the former decree between the same parties, thinking, we presume, that, as the former bill dealt only with interstate commerce, the decree could have no binding effect as against a judgment which it deemed to affect only matters within the control of the State.

We are surprised that the Court of Appeals should have decided that the judgment appealed from did not deal with commerce among the States. The portion that we have numbered (2) ordered a delivery to the Southern Railway of all live stock and freight coming over its lines consigned to the Central Stock

Yards, and this includes, of course, that coming from other States. The same is to be said of the requirement in (4) as to change of destination. When the live stock reached the point of connection or the break-up yards the carriage was not at an end, as appears by the very intent of the judgment, and as was decided in *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543, 559. Moreover, that decision cited and approved the language of the Circuit Court of Appeals, to which we have referred already, in the case between these parties, to the effect that if the Kentucky constitution could be construed as the state Court of Appeals has construed it, it would be attempting what it could not do. *Ibid.*, 562. We think discussion of this part of the case unnecessary, and we should have to hold the provision of the state constitution void as applied, if we followed the construction given to it by the state court; but we are relieved of that necessity by the fact that those portions of the judgment of which we are speaking are invalid by reason of the previous adjudication of the United States court.

As we have indicated, the decree was pleaded as a bar only "to so much of the claim for relief as relates to stock shipped or transported, or desired to be shipped or transported from points outside of Kentucky to points within Kentucky." It was not argued that a decision that certain words in a constitution have a certain meaning, in a suit founded upon them, is conclusive as between the same parties in another suit upon the same words, for the same purpose, except that one is to enforce them with regard to matters outside the control of the State, and the other to enforce them with regard to matters within its control. Therefore we express no opinion upon the point. It was argued, however, that the requirement that the plaintiff in error should deliver its own cars to another road was void under the Fourteenth Amendment as an unlawful taking of its property. In view of the well known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case

of an unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described. The want cannot be cured by inserting them in judgments under it. The law itself must save the parties' rights, and not leave them to the discretion of the courts as such. See *Security Trust & Safety Vault Co.* v. *Lexington*, 203 U. S. 323, 333; *Roller* v. *Holly*, 176 U. S. 398, 409; *Connecticut River R. R. Co.* v. *County Commissioners*, 127 Massachusetts, 50, 57; *Ash* v. *Cummings*, 50 N. H. 591; *Moody* v. *Jacksonville, Tampa & Key West R. R. Co.*, 20 Florida, 597; *Ex parte Martin*, 13 Arkansas, 198; *St. Louis* v. *Hill*, 116 Missouri, 527. It follows that the requirement of the state constitution cannot stand alone under the Fourteenth Amendment, and that the judgment in this respect also, being based upon it, must fall. We do not mean, however, that the silence of the constitution might not be remedied by an act of legislature or a regulation by a duly authorized subordinate body if such legislation should be held consistent with the state constitution by the state court. We should add that the requirement in the first part of the judgment, which we have been discussing, is open to the objections mentioned in the former decision so far as it practically requires the Louisville and Nashville Railroad to deliver cars at Louisville elsewhere than at its own terminus. 192 U. S. 570, 571.

There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sec-

tions of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state constitution requires it and lawfully may require it of a common carrier by rail. Therefore the judgment must be reversed.

Judgment reversed.

MR. JUSTICE McKENNA, dissenting.

I am unable to concur in the opinion of the court so far as it applies to the transportation of cattle wholly within Kentucky. The difference between that and interstate transportation is important, for it was conceded at the argument that at least sixty per cent of the business was of domestic cattle.

This is a second review of the controversy between the parties. It was originally started in one of the courts of Kentucky, and there, meeting obstacles arising from the want of jurisdiction over interstate commerce, the latter was made the subject of a suit in a United States Circuit Court, where the Central Stock Yards Company suffered defeat, its bill being dismissed for want of equity. This judgment was affirmed by the Circuit Court of Appeals (118 Fed. Rep. 113), and subsequently by this court. 192 U. S. 568. This is pointed out in the opinion, but it may be well to see what was decided. In the Circuit Court

of Appeals these propositions were decided: (1) Independently of statute, the railway could not be required to deliver to the Southern Railway Company for transportation to the Central Stock Yards Company the live stock, though shipped to and ultimately destined to the stock yards company. The Louisville and Nashville Company, the court said, performed its duty under the common law when it provided a place for disembarkation of the stock at the Bourbon Stock Yards, though that place was fixed by contract with the latter company. (2) That the refusal of the Louisville and Nashville Company to make such transfer of stock to the Southern Railway Company was not a violation of § 3 of the Interstate Commerce Act. (3) Considering the case more broadly and as involving the right to require one railroad to interchange traffic with another, the position of the Central Stock Yards Company would be untenable, because, as it was held at common law, a railroad is only bound to transport freight at its own terms. (4) If the constitution of Kentucky could be construed to require such delivery of the live stock, it was invalid in so far as it affected interstate commerce. The case, therefore, left local commerce untouched. It declared no principle that precluded a State by legislation, constitutional or statutory, to require such transfer of stock if it applied only to commerce within the State. The case came to this court, and here also it was considered only as it affected interstate commerce. It is true it was said that "if the cattle are to remain in the defendant's cars it cannot be required to hand those cars over to another railroad without a contract, and the courts have no authority to dictate a contract to the defendant, or to require it to make one." This expressed only a limit upon the power of the courts, not of a legislature or a constitution, for it was also said "there is no act of Congress that attempts to give courts a power to require contracts to be made in a case like this." And the cases which were cited sustain the view that the impotency of the courts was not because of a right in the railroads, which were exempt from legislative regulation, but a right only exempt from control by the courts in the

absence of legislation. None of the cases declare otherwise. They interpreted the then existing legislation, and did not attempt to decide what legislation might be competent. Indeed, Judge Jackson (afterwards a justice of this court) in *Kentucky & I. Bridge Co.* v. *Louisville & Nashville R. R. Co.*, 37 Fed. Rep. 567, 634, strongly intimated that Congress had the power to do what he, exercising the powers of the Circuit Court, could not do without legislative authority.

I will assume, therefore, the power of the State to require an exchange of cars between railroads, and consider only what are the limitations upon the exercise of the power, not broadly, for the case has been brought into the narrow requirements of provision for compensation and security. Must such provisions be explicit in the law? May not the principle or rule of regulation be prescribed by law, statutory or constitutional, and the conditions of its application be ascertained and enforced by the courts or an administrative body? To what extent a court may be made an instrumentality in the administration of the laws of a State I may refer to the *Virginia Railroad Commission Cases*, 211 U. S. 210. See also *Kohl* v. *United States*, 91 U. S. 367.

If the State may so distribute its power of regulation it is certainly not within the province of this court to say that it has not done so against a contrary view, expressed or assumed, by the courts of the State. We can only deal with the result, that is, the ultimate action of the State, through any of its instrumentalities, as offending the Fourteenth Amendment of the Constitution of the United States. The procedure is for the determination of the State. This principle is conspicuously illustrated in *Waters-Pierce Oil Co.* v. *State of Texas*, *ante*, p. 86, and is also illustrated by the decisions under the Massachusetts and New Hampshire mill acts, *infra*. What, then, is the effect of the judgment under review?

It will be observed that the constitution puts an obligation upon railroad companies to "receive, transfer, deliver and switch empty or loaded cars," and to "move, transport, receive, load or unload all the freight in carloads or less quantities

coming to or going from any railroad . . . with equal promptness and dispatch, and without any discrimination as to charges, preferences, drawback or rebate in favor of any person . . . in any matter as to payment, transportation, handling or delivering," and to "receive and transport all freight, from and to any point where there is a physical connection between the tracks of said companies." The constitution, therefore, imposes a duty, it is true, but not a duty to be uncompensated. The special emphasis of the prohibition of favor as to charges makes conspicuous and indisputable the right to make and enforce them if made and enforced without "favor to any person." There could be no discrimination "as to charges," if there were no charges, no drawback or rebate from them; and the right to require security for the return of the cars is left untouched. Nor have the constitutional provisions been limited by the decree under review.

It does not adjudge that the service required of the Louisville and Nashville Railroad should not be compensated. The right of the railroad company to charge for the use of its cars is declared. The court said that the transfer of the cars was a use of them in the interest of the public. "If this," the court further observed, "is in a sense the taking of its property for private purposes, appellant [defendant in error], as a common carrier, must submit to it, for it is only a temporary and necessary use of its property. Appellant cannot suffer loss by such use of its cars. If it delivers its cars to the Southern Railway Company to be taken to appellee [Central Stock Yards] for the loading and unloading of stock, that company has no right to detain them longer than a reasonable time for that purpose, and must return them. Appellant may charge a reasonable amount for the use of its cars, and if they are not returned, or if detained more than a reasonable time, it may sue the delinquent road for damages, or apply to a court of equity for a mandatory injunction to compel the return of cars. Indeed, it can suffer no loss which the law may not remedy." And the court pointed out that by regulations between railroads cars were inter-

changed between them at a fixed charge. It is entirely consistent with the opinion that plaintiff in error may charge for the delivery of its cars, either when the cattle are shipped or when their destination is changed, or at the time of delivery to the Southern Railway Company. It is also entirely consistent with the opinion of the court that plaintiff in error can exact such stipulations from the Southern Railway Company as will protect it fully. The practice of connecting roads should be regarded, I think, when considering so simple a servitude as imposed in this case upon property devoted to a public use, and subject, because of such use, to regulation by the State. In this every right of plaintiff in error would be preserved. In this every power of the State would be preserved. I do not stop to make a comparison between such right and such power, but I submit this court should put no limit upon the latter that is not clearly necessary to preserve the other.

Plaintiff in error makes no question of precedent or ultimate payment for the use of its cars, or the absence of provisions for their return. It is contended that in some way (in what way is not pointed out) the State must exercise its right of eminent domain, and unless the right be exercised through an impartial tribunal there is not due process of law. It is also contended that there is an attempted transfer of terminals, and the duty of a local transfer company imposed on plaintiff in error, which in some way takes its property without due process of law. The question made then is of an inviolable right, impregnable in constitutional protection, against a legislative regulation such as in the case at bar, and to what contemplation does this bring us? If the right is impregnable in constitutional protection against regulation in the interest of *intra*state commerce it is also impregnable in such constitutional protection against regulation in the interest of *inter*state commerce. Are we prepared to announce that conclusion? The consequences of it are certainly quite serious.

The act of June 29, 1906, 34 Stat. 584, c. 3591, provided that "The term 'transportation' shall include all of the articles, in-

strumentalities and facilities of shipment or carriage," and further provides that every carrier subject to its provisions shall "provide and furnish transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto." (Section 1.)

The act also provides that such carriers, upon the application of any lateral branch line of railroad or of any shipper, shall construct and operate switch connections and shall furnish cars for the traffic thereover. And the commission is given power to enforce such duty.

The commission is also given the power to divide a joint rate and establish joint rates and through routes. The commission further has the power to fix the compensation to be paid to the owner of property transported for any instrumentality furnished by him.

These are some of the regulations of interstate commerce, regulations of great reach and consequence, and they are not more specific as to compensation or security for the use or loss of cars than the constitution of Kentucky. And I submit that the power of a State over its domestic commerce is as great as the power of the Nation over interstate commerce.

The exigencies of this case do not require me to distinguish between those sovereign powers of the State denominated the power of eminent domain and the police power. Both may be exercised over private property. By the exercise of the first power property is taken and compensation for it is a necessary condition; by the exercise of the second power property is subjected to regulation and a provision for compensation is not necessary. When regulation is transcended and becomes a taking of property may, at times, be a close question, but the power of regulation must not be overlooked or underestimated. It is, as I have said, an exercise of the police power, and that is the most absolute of the sovereign powers of the State. We said in *Bacon* v. *Walker*, 204 U. S. 311, that it "extends to dealing with the conditions which exist in a State as to bring out of them the greatest welfare of its people." In *Otis Co.* v. *Ludlow Co.*, 201

U. S. 140, this court sustained the Massachusetts Mill Act, which gave the right of one owner of land on a stream to flow the land of another, against the charge that it was contrary to the Fourteenth Amendment of the Constitution of the United States as taking property without due process of law, in that it made no adequate provision for the payment of damages caused by an exercise of the rights conferred by the act. The provision for payment was an action for damages. The use of property in that case was as complete and more enduring than in this, and we said of it: "The right of the lower owner only becomes complete when the land is flowed, and as, even then, it is not a right to maintain the water upon the plaintiff's land, but merely a right to maintain the dam subject to paying for the harm actually done, we see nothing to complain of in that regard." See *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9. This court, therefore, has decided that a simple action of damages is sufficient security for compensation for that use of property, which this court, and almost every court in the Union, has held to be a taking. *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166.

It is true it is held by the Supreme Judicial Court of Massachusetts that the principle upon which the Mill Act is founded is not the right of eminent domain, but the resulting general good of all or the public welfare. *Murdock* v. *Stickney*, 8 Cush. 113. And this court, yielding also to that purpose, has quite recently declared that a State might, in order to meet new conditions, elevate into a public use of property that which under other conditions had universally been held to be a private use. *Clark* v. *Nash*, 198 U. S. 361; *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527. See also *Offield* v. *New York & N. H. R. R. Co.*, 203 U. S. 372.

Other cases may be adduced for illustration. I think, therefore, that it might easily be contended that the service required of plaintiff in error cannot be considered in any legal or practical sense a taking of property. Let us keep steadily in mind what it is that is required and what the requirement involves of the use of plaintiff in error's cars. It is a use not different from that

they served from the moment of starting, or would serve if the end of the transportation be the Bourbon Stock Yards. If the end of the transportation be made the Central Stock Yards, there is the added element only that a limited and temporary possession of the cars is given to the Southern Railway Company, a possession, it must be said, not required in the interest of that company, but in the interest of the commerce of which it and the plaintiff in error are but instrumentalities, and as aids to which they were organized and are permitted to exist.

But I do not have to take this position, strongly supported as it may be. It is enough for my purpose that the constitution of the State provides for compensation for the duty it imposes on the railroads.

I am authorized to say that MR. JUSTICE HARLAN and MR. JUSTICE MOODY concur in this dissent.